



United States Department of the Interior

NATIONAL PARK SERVICE
INTERMOUNTAIN REGION
12795 West Alameda Parkway
PO Box 25287
Denver, Colorado 80225-0287



C38 (IMSO-DE-CM)
ZION003-84

DEC 22 2003

Andrew N. Todd, President and CEO
Xanterra Parks and Resorts, Inc.
14001 E. Iliff Avenue, Suite 600
Aurora, Colorado 80014

Dear Mr. Todd:

The National Park Service is continuing the process of issuing prospectuses for new concession contracts. However, as a result of delays created by the number of expiring permits and contracts, the National Park Service has determined that a 3-year extension of your current concession authorization is necessary.

Accordingly, pursuant to Section 403(11) of P.L. 105-391 and 36 CFR § 51.23, and upon return of a signed copy of this letter agreement to the undersigned, your concession authorization is hereby extended to December 31, 2006, or until such time as a new contract for this operation is awarded, whichever occurs first. All other terms and conditions of the authorization will remain the same, subject to the terms of P.L. 105-391.

The National Park Service will notify you when it issues a solicitation for award of a new concession contract covering the service you provide.

Please indicate your acceptance of the extension provided by this letter in the space provided below and return the fully-executed letter to this office by January 9, 2004. A pre-addressed envelope is enclosed for your convenience. We have enclosed a copy of the letter for your files.

Sincerely,

Stephen P. Martin
Director, Intermountain Region

Accepted: *

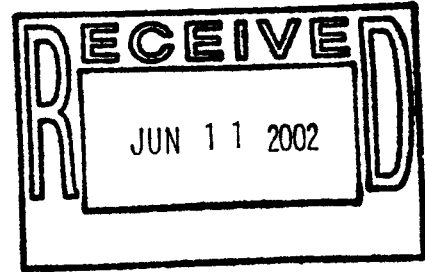
Andrew N. Todd, Pres + CEO 1/7/04
Concessioner Date

RECEIVED

JAN 12 2004

Enclosures

*In accepting the extension of our contract under the same terms and conditions, we are not indicating agreement with or acknowledgement of the nature and extent of the applicability of P.L. 105-391 or the implementing regulations.



C3823(2410)

JUN - 6 2002

Mr. Andrew N. Todd
President & CEO
Xanterra Parks and Resorts
14001 East Iliff Avenue
Suite 600
Aurora, Colorado 80014

Dear Mr. Todd:

Thank you for your letter of May 8, 2002, and follow-up concerning the identification of the ultimate parent corporation, Pacific Trail Holdings, LLC, as well as the parent corporations Xanterra Holding Corporation and Xanterra Inc.

Our review of the certificate of name changes indicates the following:

1. Amfac Holdco, LLC to Pacific Trail Holdings, LLC
2. APR Newco, Inc. to Xanterra Holding Corporation
3. Amfac Parks and Resorts, Inc. to Xanterra, Inc.
4. Amfac Recreational Services, Inc. Xanterra Parks and Resorts, Inc.
5. Amfac Resorts, LLC to Xanterra Parks and Resorts, LLC

Xanterra Parks and Resorts, Inc., will be the National Park Service Concessioner of Record for the following:

1. Bryce Canyon NP
2. Crater Lake NP
3. Everglades NP
4. Grand Canyon NP - North Rim
5. Mt. Rushmore NM
6. Death Valley NP - Scotty's Castle
7. Yellowstone NP
8. Zion NP

Xanterra Parks and Resorts, LLC, will be the National Park Service Concessioner of Record for the following:

1. Grand Canyon NP - South Rim
2. Petrified Forest NP
3. Death Valley NP - Stovepipe Wells

We understand you are working on a refinancing transaction and, in compliance with 36 CFR Part 51, will be submitting it for review. We look forward to working with you on this action as well.

Sincerely,
(Sgd.) Fran P. Mainella

Fran P. Mainella
Director

bcc: MWRO - Poole
SERO - Benedetti
IMRO - Jennings
PWRO - Sisto
SOL-Barkin
YELL-Good
CPC-O'mary

FNP:O'Mary/Corlando:eds:565-1212:5/30/02:h:\XANTERRA

AMENDMENT NO. 3
CONCESSIONS CONTRACT CC-ZION003-84
TW RECREATIONAL SERVICES, INC.
ZION NATIONAL PARK

THIS AGREEMENT made and entered into by and between the United States of America, acting in this behalf by the Secretary of the Interior, through the Director the National Park Service, hereinafter referred to as the "Secretary", and TW Recreational Services, Inc., a corporation organized and existing under the laws of the State of Delaware, hereinafter referred to as the "Concessioner".

W I T N E S S E T H:

THAT WHEREAS, the Secretary and the Concessioner entered into Concessions Contract CC-ZION003-84 on January 1, 1984 whereby the Concessioner was authorized to provide accommodations, facilities and services for the public within Zion National Park during the period from January 1, 1984 through December 31, 2003; and

WHEREAS, said concession contract has been amended by Amendment No., 1 dated July 23, 1985; and

WHEREAS, the Secretary and the Concessioner have reconsidered the amount and character of the franchise fees pursuant to Section 9(e) and within the meaning of the Concessions Policy Act (79 Stat. 969; 16 U.S.C. 20) Section 3(d); and

WHEREAS, the Secretary and the Concessioner have agreed to reconsider the nature and character of the consideration paid to the Secretary by the Concessioner for the use of Government Improvements provided the Concessioner under Section 4 herein; and

WHEREAS, the Government Improvements provided by the Secretary require certain structural and mechanical improvements which may be appropriately made by the Concessioner under the terms of this amendment; and

WHEREAS, the Secretary has agreed to certain structural and mechanical improvements being made by the Concessioner:

NOW THEREFORE, in consideration of the foregoing, the parties hereto covenant and agree to and with each other that Concession Contract CC-ZION003-84 is hereby amended, effective January 1, 1995, as follows:

1. Delete Section 4 (b) in its entirety and substitute in lieu thereof:

4 (b) "Government Improvements" as used herein, means the buildings, structures, utility systems, fixtures, equipment and other improvement upon the lands assigned hereunder, if any, constructed or acquired by the Government and provided by the Government for the purpose of this contract. The Concessioner shall have a possessory interest in improvements it makes to Government Improvements (excluding improvements made from funds from any Section 10 accounts) with the written permission of the Secretary. In the event that such possessory interest is acquired by the Secretary or a successor Concessioner at any time, notwithstanding any provision of this contract to the contrary, the Concessioner will be compensated for such possessory interest at book value as described in Section 12 (c) hereof. In the event that such possessory interest is acquired by a successor, it will not be permitted to revalue such possessory interest.

ADD Subsection 4(b)(2) as follows:

4(b)(2) Other provision of this contract notwithstanding, the Concessioner shall not acquire a possessory interest in improvements to Government Improvement made with funds from the accounts established in Section 10 hereof.

2. Amend subsection 5(b) by deleting the first sentence and replacing it with the following:

"The Concessioner agrees to spend each year through December 31, 1994, not less than three percent (3%) of the previous year's gross receipts as defined in Section 9(d) hereof, with a minimum of \$52,500 expenditure the first year, on repairs, maintenance and replacements as defined in subsection (c) and (d) of this section in Zion National Park. Effective January 1, 1995, this requirement shall be eliminated. The existing repair and maintenance account will be brought to closure upon execution of this amendment and any funds not obligated or expended will be transferred to the new capital account."

3. Delete Subsections 9(a)(1) and (2) in their entirety and replace them with the following:

(a)(1) A franchise fee equal to Zero percent (0%) of the Concessioner's gross receipts, as herein defined, for the preceding year or portion of a year.

4. Add a new Section 10, as follows:

SEC. 10. ACCOUNTS. (a) GOVERNMENT IMPROVEMENT ACCOUNT.

(1) As consideration for the use and occupancy of Government Improvements herein provided, the Concessioner shall establish and manage a "Government Improvement Account." The funds in this account belong to the Concessioner, including interest earned thereon, but will be used by the Concessioner only to undertake on a project basis repairs and improvements to Government Improvements listed in Exhibit "C" to this Contract, as directed by the Superintendent in writing and in accordance with project priorities established by the Field Director of the National Park Service. Expenditures from this account for repair and/or improvement projects in excess of \$1,000,000 must receive the written approval of the National Park Service Director.

(a)(2) Projects paid for from the Account will not include routine, operational maintenance of facilities or housekeeping activities. Nothing in this section shall lessen the responsibility of the concessioner to carry out the maintenance and repair of Government Improvements as otherwise required by this Contract from Concessioner funds exclusive of funds contained in the Government Improvement Account, and, specifically, funds from such account shall not be used for the purposes of fulfilling the Concessioner's obligations under Sections 4 and 5 of this Contract. The Concessioner shall have no ownership, possessory interest, or other interest in improvements made from the Government Improvement Account.

(a)(3) The Concessioner shall deposit within fifteen days after the last day of each month a sum equal to one-twelfth of the amount of the Government Improvement Account Allocation as established in Exhibit "C" into an interest bearing account at a Federally insured financial institution(s). The account shall be maintained separately from all other Concessioner funds, and copies of monthly account statements shall be provided to the Secretary. The Concessioner shall submit annually, no later than January 30 of the year following the Concessioner's accounting year, a statement reflecting total activity in the Government Improvement Account for the preceding accounting year. The statement shall reflect monthly credits, expenses by project, and the interest earned. The balance in the Government Improvement Account shall be available for projects in accordance with the account's purpose. Advances or credits to the account by the Concessioner will not be allowed. Projects will be carried out by the Concessioner as the Superintendent shall direct in writing in advance of any expenditure being made. For all expenditures made for each project from the account, the Concessioner shall maintain auditable records including invoices, billings, canceled checks, and other documentation satisfactory to the Secretary. An interest charge will be assessed on overdue deposits for each thirty (30) day

period, or portion thereof, that the deposit is delayed beyond the fifteen (15) day period provided for herein. The per cent of interest charged will be based on the then current value of funds to the U.S. Treasury as published in the Treasury Fiscal Requirements Manual.

(a) (4) Upon the expiration or termination of this contract, or upon assignment or sale of interests related to this contract, the unexpended balance remaining in the Government Improvement Account shall be expended for approved Projects, or shall be remitted by the Concessioner in such a manner that payment shall be received by the Secretary within fifteen (15) days after the last day of the Concessioner's operation. Any payment consisting of \$10,000 or more shall be deposited electronically by the Concessioner using the Treasury Financial Communication System. An interest charge will be assessed on overdue amounts for each thirty (30) day period, or portion thereof, that payment is delayed beyond the fifteen (15) day period provided for herein. The percent of interest charged will be based on the current value of funds to the United States Treasury which is published quarterly in the Treasury Fiscal Requirements Manual.

(b) CAPITAL IMPROVEMENT ACCOUNT. (1) As partial consideration for the privileges granted by this CONTRACT, the concessioner shall establish a "Capital Improvement Account" by which it will undertake, on a project basis, improvements which directly support the Concessioner's operations. Funds in the Capital Improvement Account, including interest earned thereon, belong to the Concessioner but shall be used in accordance with Exhibit "H" and for expenditures to Realty as defined in the "Agreement of Understanding Regarding Realty, Personalty and Furniture" for qualified projects and construction improvements approved by the Superintendent in accordance with priorities established by the Field Director, Intermountain Field Area, National Park Service. Projects estimated to cost over \$1,000,000 must be approved in writing by the National Park Service Director.

(b) (2) Projects paid for with funds from the Capital Improvement Account will not include routine, operational maintenance of facilities or housekeeping activities. Nothing in this Section shall lessen the responsibility of the Concessioner to carry out the maintenance and repair of Government Improvements as required by Sections 1, 4, 5 and 6 of this contract, or otherwise, from Concessioner funds exclusive of those funds contained in the Capital Improvement Account. Funds in the Capital Improvement Account shall not be used for purposes for which these Sections could apply unless approved by the Superintendent for repair projects of a capital nature. The Concessioner shall have no ownership, Possessory interest or other interest in improvements

made from Capital Improvement Account Funds.

(b) (3) The Concessioner shall deposit into an interest bearing account at a Federally insured financial institution by June 1, 1995 a sum ("SUM") equal to FOUR PERCENT (4%) of the Concessioner's 1994 gross receipts. Beginning January 1, 1995 and continuing through the contract term ending December 31, 2003, the Concessioner shall deposit within fifteen (15) days after the last day of each month that the Concessioner operates a sum equal to NINE and ONE-HALF PERCENT (9-1/2%) of the Concessioner's gross receipts for the previous month, as defined in this CONTRACT, into an interest bearing account at a Federally insured financial institution.

The account shall be maintained separately from all other Concessioner funds and copies of monthly account statements shall be provided to the Secretary. An interest charge will be assessed on overdue deposits for each thirty (30) day period, or portion thereof, that the deposit is delayed beyond the fifteen (15) day period provided for herein. The percent of interest charged will be based on the then current value of funds to the U.S. Treasury as published in the Treasury Fiscal Requirements Manual.

(b) (4) The concessioner shall submit annually, no later than March 31, of the year following the Concessioner's accounting year a statement reflecting total activity in the Capital Improvement Account (CIA) for the preceding accounting year. The statement shall reflect monthly credits, expenses by project and the interest earned.

(b) (5) Advances or credits to the Capital Improvement Account by the Concessioner are not permitted. Projects will be carried out by the Concessioner as the Superintendent shall direct in writing and in advance of any expenditure being made. For all expenditures made for each project from Capital Improvement Account funds, the Concessioner shall maintain auditable records including invoices, billings, canceled checks, and other documentation satisfactory to the Secretary.

(b) (6) Upon the expiration or termination of this CONTRACT, or upon assignment or sale of interests related to this CONTRACT, the unexpended balance remaining in the Capital Improvement Account shall be expended by the Concessioner for approved projects, or, shall be remitted by the Concessioner to the Secretary in such a manner that payment shall be received by the Secretary within fifteen (15) days after the last day of the Concessioner's operation. Any payment consisting of \$10,000 or more shall be deposited electronically by the Concessioner using the Treasury Financial Communication System. An interest charge

will be assessed on overdue amounts for each thirty (30) day period, or portion thereof, that payment is delayed beyond the fifteen (15) day period provided for herein. The percent of interest charged will be based on the current value of funds to the United States Treasury which is published quarterly in the Treasury Fiscal Requirements Manual.

5. Existing Sections 10 through 18 are renumbered as Sections 11 through 19, respectively.

6. Amend Exhibit "C" by deleting the phrase "Annual Use Fee" and replacing it with "Annual Government Improvement Account Allocation" throughout the document.

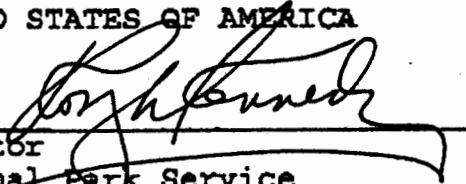
7. Section 2(b) is renumbered Section 2(b) (1) and a new subsection 2(b) (2) is added as follows:

2(b) (2) The Concessioner will develop and implement within three (3) years, a plan satisfactory to the Secretary that will assure that all gift merchandise is theme oriented specifically to Zion National Park. A wide range of specific local themes such as geology, wildlife, plant life, archeology, hiking, applicable Native American culture, and themes which enhance the idea of conservation and national park values shall be used to establish the types of merchandise to be sold.

IN WITNESS WHEREOF, the parties hereto have hereunder subscribed their names and affixed their seals.

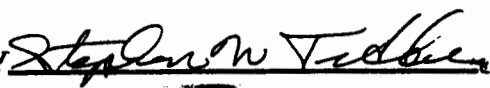
Dated at Washington, District of Columbia this 8th day of DECEMBER, 1995.

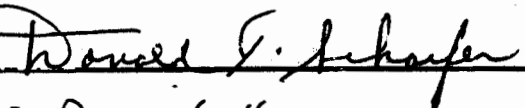
UNITED STATES OF AMERICA

By 
Director
National Park Service

Attest:

TW Recreational Services, Inc.

By 
Title Vice President

By 
Title President
Date Oct. 23, 1995

AGREEMENT OF UNDERSTANDING REGARDING
REALTY, PERSONALTY AND FURNITURE

CONCESSIONER: _____

CONCESSION CONTRACT NO. _____

ITEMS CONSIDERED AS "REALTY" FOR THE PURPOSES OF SEC. 5(d)

GENERAL THROUGHOUT:

ALL IMPROVEMENTS AFFIXED OR ATTACHED TO THE GOVERNMENT STRUCTURES (AFFIXED) IN A MANNER THAT DENOTES PERMANENCE AND/OR PROHIBITS READY REMOVAL WITHOUT USE OF TOOLS OR EQUIPMENT.

THIS WOULD INCLUDE BUT NOT BE LIMITED TO:

1. All wall-to-wall carpeting, tiles and floor finishings; affixed mirrors, shelving, racks, or cabinets; wall finishes; curtain rods or valances.
2. All electrical improvements including lighting fixtures and chandeliers, electrical wiring, panel boxes, transformers, conduit, motors, fuses, circuit breakers.
3. All plumbing improvements including pipes, drains, sewer system(s), sinks, faucets, hot or cold water storage tanks, garbage disposal grinders, grease traps; lift pumps including motors; well pumps including motors, toilets, urinals.
4. All propane tanks including tank supports, lines, regulators, protective fences.
5. All water storage tanks including lines, regulators, pumps, faucets or other dispensers.
6. All fire extinguishing systems including lines, tanks, controls, regulators, fuses, gauges, but not including hand held fire extinguishers and fire hoses.
7. All air conditioning systems including refrigeration, air cooling, evaporative coolers and other air handling equipment including thermostats, regulators, fuses, conduit, circuit breakers, motors, vents, canopies, fire prevention/suppression systems, electrical lines, and transformers. All air movement or ventilation equipment including exhaust or intake air fans and motors, motor controls, canopies, vents, grates, ducts.

CABINS, MOTELS, AND EMPLOYEE QUARTERS

All "affixed" improvements including:

1. Shower stalls and/or bathtubs, toilets and toilet bowls, urinals, sinks, stands, mirrors.

2. Clothes racks, rods or luggage racks affixed to the structure.
3. Wall or floor finishes, including wall-to-wall installed carpeting.

LODGE STRUCTURES

DINING ROOM(S) - COCKTAIL LOUNGE - GIFT SHOP - GROCERY STORE

All affixed improvements including, but not limited to:

1. Waitress/waiter stands.
2. All shelving, racks.
3. All exhaust or intake air conditioning equipment (heating, cooling, or circulation) including motors, motor controls, canopies, vents, grates, grills, ducts.
4. Cocktail bar, back bar, shelving.
5. Salad bar(s).

KITCHEN(S)

All affixed improvements including, but not limited to:

1. All stainless steel or other metal equipment fabricated, affixed and/or installed as an integral part of the structure. Included are grill and broiler stands, steam table(s), affixed stainless steel counter tops, sinks, various work areas, protective wall panels, stoves, ovens, ranges, dishwashers, grills, salad tables (bain Marie), fire prevention/suppression systems, and other affixed equipment.
2. All wood or metal shelving, and their supports.
3. All walk-in refrigerators, freezers, and their associated compressors, lines, evaporators.

ITEMS CONSIDERED AS "PERSONALTY" IN NATURE PURSUANT TO SEC. 5(d)

1. All inventories of foodstuffs, beverages, groceries, gift shop merchandise, propane gas, auto fuels and auto supplies and other inventories primarily held for resale or local consumption.
2. All advertising or other printed materials as brochures, maps, menus, guest checks, stationery.
3. All office equipment and supplies including adding machines or calculators, stationery, billing materials, file cabinets, paper goods, free standing safes (except "furniture").

4. All food, beverage and other retail licenses including seasonal alcoholic beverage licenses.
5. All motor or other vehicles including automobiles, trucks, trailers, travel trailers, mobile homes, hand trucks, carts.
6. All small power or hand tools, ladders and other small equipment, paints and other supplies held for maintenance and repairs.
7. All weight scales, ice machines.
8. All non-affixed readily removable "reach-in" type refrigerators, freezers.
9. All readily removable, non-affixed shelving, cabinets, racks, tables.
10. All clothes/linen washers and dryers.
11. All pots, pans, ladles, spoons, trays, baking pans, bowls, whips, and other small equipment.
12. All non-affixed coffee warmers, urns, and other beverage dispensing or holding equipment.
13. All non-affixed grills, ovens, microwave ovens, broilers, ranges, mixers, slicers, and other food handling preparation, warming, or holding equipment not built in as an integral portion of the structure.
14. All tables, chairs, benches, beds, bedframes and headboards, nightstands, chests, dressers, desks, sofas, stools in lodging.
15. All (non-affixed) tables, chairs, sidestands, cash register stands, booths, stools, bar and back bar, desks, in restaurants.
16. Various food service equipment (non-affixed) including food preparation/work tables or stands, dishracks, free standing racks/shelving and china, glassware, silverware, pots and pans, bowls, toasters, milk machines, ice cream type freezers, ice machines, hand trays, cash registers, office equipment and supplies.
17. Various lodging items including linens, bedspreads, blankets, pillows, mattress covers, towels, washcloths, drapes, shower curtains.

ITEMS CONSIDERED AS "FURNITURE" PURSUANT TO SEC. 5(c)(d)

GENERAL

ALL ITEMS OR FURNITURE DIRECTLY USED BY GUESTS OF EMPLOYEES OF THE VARIOUS FACILITIES:

Inclusive of:

1. LODGING: Tables, chairs, benches, beds, bedframes and headboards, night-stands, chests, dressers, desks, sofas, stools.
2. RESTAURANT(S): Tables, chairs, sidestands, cash register stands, booths, stools, bar and back bar, desks.

But exclusive of:

1. Various food service equipment (non-affixed) including food preparation/ work tables or stands, china glassware, silverware, pots and pans, bowls, dishracks, toasters, milk machines, ice cream type freezers, ice machines, hand trays, cash registers, office equipment and supplies, free standing racks/shelving.
2. Various lodging items including linens, bedspreads, blankets, pillows, mattress covers, towels, washcloths, drapes, shower curtains.

The parties hereto have hereunder subscribed their names to this agreement this day of December 6, 1984.

TW Services, Inc.

By: George B. Jones

Title: President

United States of America

By: Jack Heshel

Acting

Regional Director, RMR

AMENDMENT NO. 2
CONCESSIONS CONTRACT CC-ZION003-84
TW RECREATIONAL SERVICES, INC.
ZION NATIONAL PARK

THIS AGREEMENT, made and entered into, by and between the United States of America, noting in this behalf by the Secretary of the Interior, through the Regional Director, Rocky Mountain Region, National Park Service, hereinafter referred to as the "Secretary", and TW Recreational Services, Inc., a corporation organized and existing under the laws of the State of Delaware, hereinafter referred to as the "Concessioner":

W I T N E S S E T H

THAT WHEREAS, the Secretary and the Concessioner entered into Concession Contract CC-ZION003-84 on December 3, 1984, whereby the Concessioner is authorized to provide facilities and services for the public within Zion National Park during the period from January 1, 1984, through December 31, 2003; and

WHEREAS, certain improvements to Zion Lodge are necessary and the Secretary desires the Concessioner to accomplish these improvements; and

WHEREAS, the Secretary has determined, in accordance with subsection 3(c) of the Act of October 9, 1965, that the probable value to the Concessioner of the privileges granted by Concession contract No. CC-ZION003-84 warrants an increase in the franchise fee and to establish a new building and improvement program; and

NOW THEREFORE, in consideration of the foregoing, the parties hereto covenant and agree to and with each other that Concessions Contract No. CC-ZION003-84 is hereby amended as follows:

1. Amend Section 1 Term of Contract by adding a new subsection, (f) as follows:

(f) Additional Improvement Program (1) The concessioner shall undertake and complete a building and improvement program not to exceed \$350,000, exclusive of fees and costs for design, site supervision and administration. Such improvement program is to replace the roof and remodel the exterior of Zion Lodge. It is agreed that such investment is consistent with subsection 3(a) hereof.

(2) the concessioner shall start this improvement program on or before October 1, 1989, in such a manner as to demonstrate to the Satisfaction of the Secretary that it is in good faith carrying said program forward reasonably under the circumstances. After approval of plans and specifications, the Concessioner shall provide the Secretary with such evidence or documentation as may be satisfactory to the Secretary, to demonstrate that such program is being carried forward, and shall complete and have it available for public use on or before December 31, 1990.

(3) All improvements made under the provisions of this subsection are to be considered as Government Improvements. The concessioner's possessory interest in these improvements is to be reduced over the remaining term of the contract by December 31, 2003, the possessory interest will have a value of zero (0) dollars.

2. Amend Section 9, Franchise Fee subsection (2), by deleting "TWO PERCENT (2%)" and substituting in lieu thereof "TWO AND ONE-HALF (2.5%)"

IN WITNESS WHEREOF, the parties hereto have hereunder subscribed their names and offered their seals.

Dated at Byron Canyon, UT this 24th day of August, 1989.

TW RECREATIONAL SERVICES, INC.

UNITED STATES OF AMERICA

BY: [Signature]

BY: [Signature]

Regional Director

Rocky Mountain Region

TITLE: Vice Pres. T.W. Rec. Svcs.

DATE: Aug. 24, 1989

DATE: August 24, 1989

ATTEST: _____

BY: [Signature]

TITLE: Vice Pres. T.W. Rec. Svcs.

AMENDMENT NO. 1

Concession Contract No. 1590-04-0002

TW Services, Inc.

Zion National Park

THIS AGREEMENT made and entered into by and between the United States of America, acting in this behalf by the Secretary of the Interior, through the Regional Director, Rocky Mountain Region, National Park Service, hereinafter referred to as the "Secretary" and TW Services, Inc., corporation organized and existing under the laws of the State of Delaware, hereinafter referred to as the "Concessioner":

W I T N E S S E T H:

THAT WHEREAS, the Secretary and the Concessioner entered into Concession Contract No. 1590-04-0002 on December 6, 1984, whereby the Concessioner was authorized to provide accommodations, facilities and services for the public within Zion National Park, during the period January 1, 1984, through December 31, 2003; and

WHEREAS, the Secretary and the Concessioner have determined that it would be to their mutual benefit to change the responsibility for specific work projects found in Section 1, entitled TERM OF CONTRACT; and

WHEREAS, the Secretary and the Concessioner have determined that the planning, design and construction of projects will be more effective and efficient if the concessioner takes on projects previously intended for the Government and, in turn, the Government using Visitor Facility Funds, takes on projects previously obligated to the concessioner by the concession contract; and

WHEREAS, the Secretary has determined that Exhibit "C", Government-Owned Structures Assigned, be revised to document buildings presently in use by the Concessioner after the 1984 initial reconstruction phase; and

WHEREAS, the Secretary has determined that new contract language be added regarding electronic fund transfers of Concessioner franchise fee payments of \$10,000 or more using the Treasury Financial Communications System;

NOW THEREAFTER, in consideration of the foregoing, the parties hereto covenant and agree to and with each other that Concession Contract Number 1590-04-0002 is hereby amended, effective upon execution by the United States, as follows:

A. Delete subsection (b) of Section 1 and substitute in lieu thereof the following new subsection (b) of Section 1:

(b) The Concessioner shall undertake and complete a building and improvement program costing \$3,073,000, exclusive of fees and costs for design, site supervision, and administration. It is agreed that such investment is consistent with Section 3(a) hereof. Such building and improvement program shall be located as generally shown on the Zion Lodge Development Program, exhibit "A", including any amendments thereto approved by the Secretary, and shall include the following projects to be built in the following priority order:

1. Develop 80-Unit motel

a. Complete site work for 80-unit motel complex and address the drainage problems. This should be completed in the fall of 1984 and spring of 1985, in conjunction with drainage work and removal of existing Pioneer and Frontier cabins and cabin support facilities by the National Park Service.

The National Park Service is to upgrade primary utilities to concession area in the fall of 1983, fall of 1984 and spring of 1985, pending availability of funds, and be responsible for processing the cabins designated for removal.

b. Construct and furnish a 2-story, 80-unit motel complex--average room size 320 square feet, with storage and support facilities space, compatible with historic guidelines provided. Construction is to be completed, including furnishings, by opening of 1985 season.

c. Construct secondary water, gas distribution, electric, telephone, and sewer collection lines within the concession area. Complete by opening of 1985 season.

d. Landscape new motel complex. Complete by opening of 1985 season.

2. Remodel kitchen and snack bar

a. Completely remodel kitchen in the lodge, including new equipment. Complete by the opening of the 1984 season.

b. Completely remodel snack bar, including new equipment and add a new outdoor dining patio. Complete by the opening of the 1984 season.

3. Remodel Western Cabins

a. Completely remodel 38 Western units to prototype at Zion National Park. Complete by the opening of the 1984 season.

4. Prepare site and construct employee trailer park (8 to 10 spaces) including utilities and remove existing trailer spaces. Complete by the opening of the 1985 season.

The above projects 1 through 4 are to be undertaken and completed by the dates indicated. The following projects 5 through 9 are to be accomplished with capital funds available to the Concessioner and upon agreement between TWS and the National Park Service, the Concessioner may use funds otherwise obligated for repair, maintenance and replacement expenditures pursuant to Section 5 (b). Such an agreement could be made for the following projects only notwithstanding the exclusion in Section 5(d).

5. Remodel interior of Zion Lodge. To be completed by 1986.

- a. Install central fire sprinkler system
- b. Install central fire alarm system
- c. Replace boiler system
- d. Remodel public restrooms; provide handicapped access

6. Construct sidewalks within the concession area. To be completed by the opening of the 1985 season.

7. Provide furnishings for new employee dormitory, upon its completion by the National Park Service.

8. Construct new maintenance facility, parking area, retainer wall and complete site work.

9. Remodel exterior of Zion Lodge

a. Remodel facade of existing Zion Canyon Lodge. The National Park Service will provide preliminary design sketches.

As used in this section the phrase "concession area" shall mean all the area within the lines delineated on Exhibit "C" of this contract.

B. At the end thereof, add to Section 9. Franchise Fees, subsection (b) the following sentence, "All franchise fee payments consisting of \$10,000 or more, shall be deposited electronically by the Concessioner using the Treasury Financial Communications System.

C. Delete first two pages of Exhibit C and substitute in lieu thereof the new two pages of Exhibit C in entirety.

IT WITNESS WHEREOF, the parties hereto have hereunder ascribed their names and affixed their seals.

Dated at Denver, Colorado, this 23rd day of

July, 1985.

UNITED STATES OF AMERICA

Acting

BY: [Signature]
Regional Director
Rocky Mountain Region

ATTEST

BY: [Signature]

DATE: July 9th 1985

TW SERVICES. INC.

BY: [Signature]

DATE: July 9, 1985

ZION 003

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

--oo0oo--

TW SERVICES, INC.
ZION NATIONAL PARK

--oo0oo--

CC-ZION003-85
CONTRACT NO. ~~CC 1590-04-0002~~ EXECUTED December 3, 1984

COVERING THE PERIOD

January 1, 1984 Through December 31, 2003

Amendment No. 1, 7-23-85

CONCESSION CONTRACT

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EXHIBITS

1. Exhibit "A": Zion Lodge Development Plan
2. Exhibit "B": Nondiscrimination
3. Exhibit "C": Government-Owned Structures and Land Assigned
4. Exhibit "D": Possessory Interest Assets
5. Exhibit "E": Building Replacement Cost for Insurance Purposes

Contract
No. _____

THIS CONTRACT made and entered into by and between the United States of America, acting in this matter by the Secretary of the Interior, the Director of the National Park Service, hereinafter referred to as "Secretary," and TW Services, Inc. a corporation organized and existing under the laws of the State of Delaware, hereinafter referred to as "Concessioner":

W I T N E S S E T H:

THAT WHEREAS, Zion National Park hereinafter referred to as the "Park" is administered by the Secretary to conserve the scenery and the natural and historic objects and the wildlife therein, and to provide for the enjoyment of the same in such manner as will leave such area unimpaired for the enjoyment of future generations; and

WHEREAS, the accomplishment of these purposes requires that certain facilities and services be provided for the public visiting the area and that all private interest shall be excluded except so far as may be necessary for the accomplishment of said purposes, including accommodation of the public; and

WHEREAS, the United States has not itself provided such necessary facilities and services and desires the Concessioner to establish and operate the same at reasonable rates under the supervision and regulation of the Secretary; and

WHEREAS, the establishment and maintenance of such facilities and services involves a substantial investment of capital and the assumption of the risk of operating loss, it is therefore proper, in consideration of the obligations assumed hereunder and as an inducement to capital, that the Concessioner be given assurance of security of such investment and of a reasonable opportunity to make a profit; and

WHEREAS, pursuant to law the Secretary is required to exercise his authority hereunder in a manner consistent with a reasonable opportunity by the Concessioner to realize a profit on the operations conducted hereunder as a whole commensurate with the capital invested and the obligations assumed;

NOW THEREFORE, pursuant to the authority contained in the Acts of August 25, 1916 (39 Stat. 535; 16 U.S.C. 1, 2-4), and October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), and other laws supplemental thereto and amendatory thereof, the said parties agree as follows:

SEC. 1. TERM OF CONTRACT. (a) This contract shall be for the term of twenty (20) years from January 1, 1984, to December 31, 2003.

(b) The Concessioner shall undertake and complete a building and improvement program costing \$3,073,000, exclusive of fees and costs for design, site supervision, and administration. It is agreed that such investment is consistent with Section 3(a) hereof. Such building and improvement program shall be located as generally shown on the Zion Lodge Development Plan, exhibit "A", including any amendments thereto approved by the Secretary, and shall include at a minimum the following three items:

1. Develop 80-unit motel

a. Complete site work for 80-unit motel complex and address the drainage problems. This should be completed in the fall of 1984, and spring of 1985, in conjunction with drainage work and removal of existing Pioneer and Frontier cabins and cabin support facilities by the National Park Service.

The National Park Service is to upgrade utilities to concession area in the fall of 1983, fall of 1984 and spring of 1985, pending availability of funds, and be responsible for processing the cabins designated for removal.

b. Construct and furnish a 2-story, 80-unit motel complex—average room size 320 square feet, with storage and support facilities space, compatible with historic guidelines provided. Construction is to be completed, including furnishings, by opening of 1985 season.

c. Construct water distribution, electric, and sewer collection lines within the concession area. Complete by opening of 1985 season.

d. Construct sidewalks within the concession area. Complete by opening of 1985 season.

e. Landscape new motel complex. Complete by opening of 1985 season.

2. Remodel kitchen and snack bar

a. Completely remodel kitchen in the lodge, including new equipment. Complete by the opening of the 1984 season.

b. Completely remodel snack bar, including new equipment and add a new outdoor dining patio. Complete by the opening of the 1984 season.

3. Remodel Western cabins

a. Completely remodel 38 Western units to prototype at Zion National Park. Complete by the opening of the 1984 season.

Any funds remaining after completion of the aforementioned items shall be used to complete the following five items:

4. Employee trailer village

a. Prepare site and construct employee trailer park (8 to 10 spaces) including utilities and remove existing trailer spaces.

5. Maintenance areas

a. Complete site work for new maintenance facilities building, including parking area.

b. Construct new maintenance facility and parking area, including retainer walls.

6. New employee dorm

a. Prepare site and construct employeee dorms (approximately 40 persons) with recreation area, including furnishings and parking area expansion.

7. Remodel Zion Canyon Lodge

a. Remodel facade of existing Zion Canyon Lodge. The National Park Service will provide preliminary design sketches.

b. Remodel restrooms, including handicapped access.

8. Remodel existing dorms

a. Rehabilitate existing employee dormitories to National Park Service standards.

(c) The Concessioner shall start the building and improvement program on or before January 1, 1984, in such a manner as to demonstrate to the satisfaction of the Secretary that it is in good faith carrying said program forward reasonably under the circumstances. After approval of plans and specifications, the Concessioner shall provide the Secretary with such evidence or documentation, as may be satisfactory to the Secretary, to demonstrate that such program is being carried forward, and shall complete and have it available for public use on or before December 31, 1989. Any construction or related work approved by the Secretary and performed on the items in the aforesaid building and improvement program in advance of the execution date of this contract will be considered as applying against such program.

(d) The Concessioner may, in the discretion of the Secretary, be relieved in whole or in part of any or all of the obligations of the building and improvement program for such stated periods as the Secretary may deem proper upon written application by the Concessioner showing circumstances beyond its control warranting such relief.

(e) The Concessioner shall provide the Secretary with sufficient evidence or documentation on an annual basis, as shall be satisfactory to the secretary to provide assurance of the completion of projects initiated. The data shall include, but not be limited to, schedules of projects, costs of completed projects, budgets for each upcoming year and status reports on projects for the past year and the upcoming year. Such evidence or documentation may be requested at any reasonable time by the Secretary, but if not so requested at another time shall be submitted upon the date specified for the submission of the Concessioner's annual financial report as stipulated within Section 8(a) of this contract.

SEC. 2. ACCOMMODATIONS, FACILITIES AND SERVICES. (a) The Secretary requires and hereby authorizes the Concessioner during the term of this contract to provide accommodations, facilities, and services for the public within Zion National Park, as follows:

- (1) Lodging Accommodations
- (2) Food and beverage service and facilities
- (3) Transportation service and facilities originating within the park
- (4) Merchandising service and facilities

(5) The Concessioner may provide services incidental to the operations authorized hereunder at the request of the Secretary.

(b) The Secretary reserves the right to determine and control the nature, type and quality of the merchandise and services described herein as authorized and required to be sold or furnished by the Concessioner within the area. Operations under this contract and the administration thereof by the Secretary shall be subject to the laws of Congress governing the area and the rules, regulations, and policies promulgated thereunder, whether now in force or hereafter enacted or promulgated, including but not limited to the United States Public Health Service requirements. Concessioners must also comply with current applicable criteria promulgated by the United States Department of Labor's Occupational Safety and Health Act of 1970 (OSHA) and those provisions outlined in the National Park Services's Safety and Occupational Health Policy associated with visitor safety and health.

(c) During the term hereof and subject to satisfactory performance hereunder, the Concessioner is granted a right of first refusal to provide such additional concession accommodations, facilities and services of the same character as required and authorized hereunder as the Secretary may designate as necessary or desirable for accommodation and convenience of the public in Zion National Park provided, however, that this right of first refusal shall not apply to transportation services, that originate outside the boundaries of the park. If the Concessioner doubts the necessity, desirability, timeliness, reasonableness, or practicability of such new or additional facilities, accommodations or services except transportation services, and/or declines or fails within a reasonable time to comply with the designation of the Secretary, then the Secretary in his discretion may authorize others under substantially the same terms and conditions to provide such designated accommodations, facilities, or services. This right of first refusal does not apply to concession operations in connection with lands hereafter acquired which expand the existing boundary of the area. Nothing contained in this section or elsewhere in this contract shall be construed as prohibiting or curtailing operations conducted in the area by other concessioners now authorized by the Secretary to provide accommodations therein for the public, including the successors or assigns of such concessioners, when approved by the Secretary.

SEC. 3. PLANT, PERSONNEL, AND RATES. (a)(1) The Concessioner shall maintain and operate the said accommodations, facilities, and services to such extent and in such manner as the Secretary may deem satisfactory, and shall provide the plant, personnel, equipment, goods, and commodities necessary therefore provided that the Concessioner shall

not be required to make investments inconsistent with a reasonable opportunity to realize a profit on its operations hereunder commensurate with the capital invested and the obligations assumed.

(2) All rates and prices charged to the public by the Concessioner for accommodations, services, or goods furnished or sold hereunder shall be subject to regulation and approval by the Secretary. The Secretary shall exercise his decision making authority with respect to the Concessioner's rates and prices in a manner consistent with a reasonable opportunity for the Concessioner to realize a profit on its operations hereunder as a whole commensurate with the capital invested and the obligations assumed. Reasonableness of rates and prices will be judged primarily by comparison with those currently charged for comparable accommodations, services or goods furnished or sold outside of the areas administered by the National Park Service under similar conditions, with due allowance for length of season, provision for peak loads, average percentage of occupancy, accessibility, availability and cost of labor and materials, type of patronage, and other conditions customarily considered in determining charges, but due regard may also be given to such other factors as the Secretary may deem significant.

(3) The Concessioner shall require its employees to observe a strict impartiality as to rates and services in all circumstances. The Concessioner may, subject to the prior approval of the Secretary, grant complimentary or reduced rates under such circumstances as are customary in businesses of the character conducted hereunder. The Concessioner will provide Federal employees conducting official business reduced rates for lodging, essential transportation and other specified services in accordance with procedures established by the Secretary.

(b) (1) The Concessioner may be required to have its employees who come in direct contact with the public, so far as practicable, to wear a uniform or badge by which they may be known and distinguished as the employees of the Concessioner. The Concessioner shall require its employees to exercise courtesy and consideration in their relations with the public.

(2) The Concessioner shall review the conduct of any of its employees whose action or activities are considered by the Concessioner or the Secretary to be inconsistent with the proper administration of the area and enjoyment and protection of visitors and shall take such actions as are necessary to fully correct the situation.

(3) The Concessioner shall comply with the requirements of (a) Title VII of the Civil Rights Act of 1964, as well as Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, (b) Title V, Section 503 of the Rehabilitation Act of

September 26, 1973, P.L. 93-112, which requires Government Contractors and Subcontractors to take affirmative action to employ and to advance in employment qualified handicapped individuals, and with regulations heretofore or hereafter promulgated, relating to nondiscrimination in employment and in providing facilities and services to the public and shall do nothing in advertising for employees which will prevent those covered by these laws from qualifying for such employment. Regulations heretofore promulgated are set forth in Exhibit "B" attached hereto and made a part hereof.

SEC. 4. GOVERNMENT LAND AND IMPROVEMENTS. (a) The Secretary hereby assigns for use by the Concessioner during the term of this contract, certain parcels of land and Government Improvements, if any (as described in Exhibit "C" hereto) necessary to conduct the operations authorized hereunder. The Secretary reserves the right to withdraw such assignments or parts thereof at any time during the term of this contract if, in his judgment, (1) such withdrawal is necessary for the purpose of protecting visitors or area resources, or, (2) the operations utilizing such assigned lands are terminated pursuant to Section 11 hereof. Any permanent withdrawal of assigned lands or improvements which are essential for conducting the operation authorized hereunder will be considered by the Secretary as a termination pursuant to Section 11 hereof. The Secretary shall compensate the Concessioner for any possessory interest in such withdrawn properties at book value as described in Section 12 hereof, or, in the event that Concessioner Improvements in which the Concessioner has a possessory interest are to be replaced by the Concessioner within the area, in accordance with fair value compensation for possessory interest described in subsection 12(b) hereof.

(b) "Government Improvements" as used herein, means the buildings, structures, utility systems, fixtures, equipment, and other improvements upon the lands assigned hereunder, if any, constructed or acquired by the Government and provided by the Government for the purpose of this contract. The Concessioner shall have a possessory interest in improvements it makes to Government Improvements. In the event that such possessory interest is acquired by the Government or a successor Concessioner at any time the Concessioner will be compensated for such possessory interest pursuant to Section 12 hereof.

(c) The Concessioner shall be accountable to the Secretary for the real and personal property assigned to it hereunder, and shall be responsible for the maintenance and replacement of such property as may be necessary to maintain same in a good and operable condition subject to Section 5 of this contract. The Concessioner shall maintain an inventory control system over the equipment and property assigned hereunder, as prescribed by the Secretary.

(d) The Secretary shall have the right at any time to enter upon the lands and improvements utilized by the Concessioner hereunder for any purpose he may deem reasonably necessary for the administration of the area and the Government services therein.

(e) The Concessioner may construct or install upon the assigned lands such buildings, structures, and other improvements as are necessary for the operations required hereunder, subject to the prior written approval by the Secretary of the location, plans, and specifications thereof. The Secretary may prescribe the form and contents of the application for such approval. The desirability of any project as well as the location, plans and specifications thereof will be reviewed in accordance with the provisions of the National Environmental Policy Act of 1969 and the National Historic Preservation Act of 1966.

(f) If during the term hereof a Government Improvement requires repairs or improvements that serve to prolong the life of the Government Improvement to an extent requiring capital investment for major repair, such capital investment shall be borne by the Government subject to the availability of appropriated funds. If appropriated funds are not available, and the Secretary determines that such repairs or improvements are necessary to a satisfactory performance of the Concessioner's obligations hereunder, the Concessioner may be required to repair the Government Improvement subject to the limitations on investment set forth in Section 3(a) hereof.

SEC. 5. REPAIR, MAINTENANCE, AND REPLACEMENTS. (a) Subject to Section 4(f) hereof, the Concessioner will physically maintain and repair all facilities (both Government and Concessioner's Improvements) used in the operation hereunder, to the satisfaction of the Secretary and generally in accordance with a twenty year life cycle maintenance plan mutually agreed upon between the Secretary and the Concessioner. In order that a high standard of physical appearance, operations, and repair and maintenance be achieved, appropriate periodic inspections will be carried out jointly by the Secretary and the Concessioner. From these inspections the Secretary and Concessioner will jointly develop a specific written schedule and budget of repair, maintenance and replacement projects for each year. The schedule of projects and budget shall be subject to the prior written approval of the Secretary. In the event of dispute concerning the specific written schedule and budget of repair, maintenance and replacement projects the decision of the Secretary shall be final. The Concessioner shall promptly carry out, at Concessioner's expense, the approved written program of repairs, maintenance and replacements.

(b) The Concessioner agrees to spend annually not less than three percent (3%) of the previous year's gross receipts as defined

in Section 9(d) hereof, with a minimum of \$52,500 expenditure the first year, on repairs, maintenance and replacements as defined in subsections (c) and (d) of this section in Zion National Park. In the evaluation of the Concessioner's performance under this contract, the Secretary will consider the average percentage of repairs, maintenance and replacements over each five (5) year period of this contract so as to account for years when a percentage higher or lower than three percent (3%) is actually achieved. Monies not expended at the end of each five (5) year period shall be promptly expended by the Concessioner at the discretion of the Secretary for improvements to Government improvements.

17692B.2.

(c) The term "repairs and maintenance" shall be defined as this expense classification is normally defined under generally accepted accounting principles, including expenses of the following nature: building repairs, electrical and mechanical equipment repairs, furniture and equipment repairs, painting and decorating, landscaping, and plumbing, heating and air conditioning repairs, but excluding all costs associated with ordinary housekeeping of visitor facilities and grounds and repair and/or maintenance of motor vehicles used for purposes other than day-to-day maintenance functions such as vehicles used for TWA service's management and staff and for public transportation. Vehicles used for public transportation will be addressed as a separate addendum to the contract.

(d) The term "replacements" shall be defined to include replacement of furniture, and those fixtures realty in nature but excluding equipment and/or expendable items personalty in nature and excluding furniture, fixtures and equipment called for in Section 1(b) hereof. The Concessioner shall be accountable to the Secretary for all replacement items made hereunder. All replacement items realty in nature shall become the property of the United States and all replacement items personalty in nature shall become the property of the concessioner at the expiration or termination of the contract.

(e) The Concessioner shall provide the Secretary with sufficient evidence or documentation on an annual basis, as shall be satisfactory to the Secretary, to provide assurance of the expenditures made. Such evidence or documentation may be requested at any reasonable time by the Secretary, but if not so requested at another time shall be submitted upon the date specified for the submission of the Concessioner's annual financial report as stipulated within Section 8(a) of this contract.

(f) The Concessioner may in the discretion of the Secretary, be relieved in whole or in part of any or all of the obligations of the repair, maintenance, and replacement program for such stated periods as the Secretary may deem proper upon written application by the Concessioner showing circumstances beyond his control warranting such relief.

(g) In the event of any Assignment or Sale of Interests pursuant to Sec. 13, any monies not expended within each five year period during the term of this contract shall be transferred to the successor Concessioner, if any, to be expended at the direction of the Secretary.

SEC. 6. CONCESSIONER'S IMPROVEMENTS. (a) "Concessioner's Improvements," as used herein, means buildings, structures, fixtures, equipment, and other improvements, affixed to or resting upon the lands assigned hereunder in such manner as to be a part of the realty, provided by the Concessioner for the purpose of this contract, (excluding improvements made to Government Improvements by the Concessioner), as follows: (1) such improvement upon the lands assigned at the date hereof as described in Exhibit "D" hereto; and (2) all such improvements hereafter constructed upon or affixed to the lands assigned to the Concessioner with the written consent of the Secretary. Concessioner's Improvements do not include any interest in the land upon which the described structures are located.

(b) The Concessioner shall have a possessory interest in all Concessioner's Improvements recognized by this contract. Possessory interest shall consist of all incidents of ownership, except legal title which shall be vested in the United States. However, such possessory interest shall not be construed to include or imply any authority, privilege, or right to operate or engage in any business or other activity and the use or enjoyment of any structure, fixture, or improvement in which the Concessioner has a possessory interest shall be wholly subject to the applicable provisions of this contract and to the laws and regulations relating to the area. The said possessory interest shall not be extinguished by the expiration or other termination of this contract, and may not be terminated or taken for public use without just compensation as determined in accordance with Section 12. Wherever used in this contract, "possessory interest" shall mean the interest described in this paragraph. Performance of the obligations assumed by the Secretary under Section 12 hereof shall constitute just compensation with respect to the taking of a possessory interest in the circumstances therein described.

(c) Any salvage resulting from the authorized removal, severance, or demolition of a Concessioner's Improvement or any part thereof shall be the property of the Concessioner.

(d) In the event that a Concessioner's Improvement is removed, abandoned, demolished, or substantially destroyed and no other improvement is constructed on the site, the Concessioner shall promptly upon the request of the Secretary, restore the site as nearly as practicable to a natural condition.

SEC. 7. UTILITIES. (a) The Secretary shall furnish utilities to the Concessioner, for use in connection with the operations authorized hereunder, when available, at reasonable rates to be fixed by the Secretary, in his discretion, and which shall at least equal the actual cost of providing the utility or service unless a reduced rate is provided for in an established policy of the Secretary in effect at the time of billing.

(b) Should any such service not be available or sufficient, the Concessioner may, with the written approval of the Secretary and under such requirements as shall be prescribed by him, secure the same at its own expense from sources outside the area or may install the same within the area subject to the following conditions:

(1) Any water rights deemed necessary by the Concessioner for use of water on Federal lands shall be acquired at its expense in accordance with any applicable state procedures and state law. Such water rights, upon expiration or termination of this contract for any reason shall be assigned to and become the property of the United States without compensation.

(2) Any service provided by the Concessioner under this section shall, if requested by the Secretary, be furnished to the Government to such an extent as will not unreasonably restrict anticipated use by the Concessioner. The rate per unit charged the Government for such service shall be approximately the average cost per unit of providing such service.

(3) All appliances, and machinery to be used in connection with the privileges granted in this section, as well as the plans for location and installation of such appliances and machinery shall first be approved by the Secretary.

SEC. 8. ACCOUNTING RECORDS AND REPORTS. (a) The Concessioner shall maintain an accounting system whereby the accounts can be readily identified with the System of Account Classification prescribed by the Secretary. The Concessioner shall submit annually as soon as possible but not later than ninety (90) days after each fiscal year ending between the 10th and 25th day of December, inclusive, a financial statement for the preceding year as prescribed by the Secretary, and such other reports and data as may be required by the Secretary. If annual gross receipts are in excess of \$1 million, the financial statements shall be audited by an independent certified public accountant or by an independent licensed public accountant certified or licensed by a regulatory authority of a state or other political subdivision of the United States on or before December 31, 1970, in accordance with the auditing standards and procedures promulgated by the American Institute of Certified Public Accountants.

Financial statements accompanied by remarks such as "prepared from client records without audit" are unacceptable. If annual gross receipts are between \$250,000 and \$1 million, the financial statement shall be reviewed by an independent certified public accountant or by a licensed public accountant certified or licensed by a regulatory authority of a state or other political subdivision of the United States on or before December 31, 1970, in accordance with the auditing standards and procedures promulgated by the American Institute of Certified Public Accountants.

The independent licensed or certified public accountant shall include a statement to the effect that the amounts included in the financial report are consistent with those included in Federal and State tax returns. If they are not, then a statement showing differences shall be included. The Secretary shall have the right to verify and copy for his own use all such reports from the books, correspondence, memoranda, and other records of the Concessioner and subconcessioners, if any, and of the records pertaining thereto of a proprietary or affiliated company, if any, during the period of the contract, and for such time thereafter as may be necessary to accomplish such verification.

(b) Within ninety (90) days of the execution of this contract or its effective date, whichever is later, the Concessioner shall submit to the Secretary a schedule that identifies and provides details for assets in which the Concessioner claims a possessory interest. The schedule must describe these assets in detail showing for each such asset the date acquired, useful life, cost and book value.

(c) The Secretary and Comptroller General of the United States, or any of their duly authorized representatives, shall, until the expiration of five (5) calendar years after the close of business year of the Concessioner and any subconcessioner have access to and the right to examine any of the pertinent books, documents, papers, and records related to this contract including Federal, and state income tax returns.

SEC. 9. FRANCHISE FEE. (a) For the term of this contract, the Concessioner shall pay to the Secretary for the privileges granted herein as follows:

(1) An annual fee for the use of any Government Improvements utilized by the Concessioner hereunder, if any. Such fee and assigned Government buildings to be as set forth in Exhibit "C" hereto but in no event shall the fee exceed the fair annual value of such Government Improvements as determined by the Secretary.

(2) In addition to the foregoing, a further sum equal to TWO PERCENT (2%) of the Concessioner's gross receipts, as herein defined, for the preceding year.

(b) The franchise fee shall be due on a monthly basis in such a manner that payment shall be received by the Secretary within 15 days after the last day of each month that the concessioner operates. Such monthly payment shall include the annual use fee for assigned Government Improvements, as set forth in Exhibit "C" hereto, divided by the expected number of operating months, as well as the specified percentage of gross receipts for the preceding month. The payment of any additional amounts due at the end of the operating year as a result of adjustments shall be paid at the time of submission of the annual financial report. Overpayments shall be offset against the following year's franchise fees due.

(c) An interest charge will be assessed on overdue amounts for each 30 day period, or portion thereof, that payment is delayed. The percent of interest charged will be based on the current value of funds to the United States Treasury which is published quarterly in the Treasury Fiscal Requirements Manual.

(d)(1) The term "gross receipts," as used herein, shall be construed to mean the total amount received or realized by, or accruing to, the Concessioner from all sales, including those through vending machines and other coin-operated devices, for cash or credit, of services, accommodations, materials, and other merchandise made pursuant to the rights granted in this contract, including gross receipts of subconcessioners as hereinafter defined and commissions earned on contracts or agreements with other persons or companies operating in the area, and excluding gross receipts from the sale of genuine United States Indian and native handcraft, intracompany earnings on account of charges to other departments of the operation (such as laundry), charges for employees' meals, lodgings, and transportation, cash discounts on purchases, cash discounts on sales, returned sales and allowances, interest on money loaned or in bank accounts, income from investments, income from subsidiary companies outside of the area, sale of property other than that purchased in the regular course of business for the purpose of resale, and sales and excise taxes that are added as separate charges to approved sales prices, gasoline taxes, fishing license fees, and postage stamps, provided that the amount excluded shall not exceed the amount actually due or paid Governmental agencies.

(2) The term "gross receipts of subconcessioners" as used in subsection (d)(1) of this section shall be construed to mean the total amount received or realized by, or accruing to, subconcessioners from all sources, including that through vending machines or other coin-operated devices, as a result of the exercise of the rights conferred by subconcession contracts hereunder without allowances, exclusions, or deductions of any kind or nature whatsoever and the subconcessioner shall report the full amount of all such receipts to the Concessioner within 45 days after each fiscal year ending between the 10th and 25th day of

December, inclusive each year. The subconcessioners shall maintain an accurate and complete record of all items listed in subsection (d)(1) of this section as exclusions from the Concessioner's gross receipts and shall report the same to the Concessioner with the gross receipts. The Concessioner shall be entitled to exclude items listed in subsection (d)(1) in computing the franchise fee payable to the Secretary as provided for in subsection (a) hereof.

(e) Within sixty (60) days after the end of each five year period of this contract or as otherwise specified, at the instance of either party hereto, the amount and character of the franchise fees provided for in this section may be reconsidered. Such request shall be made in writing within 60 days after the end of the applicable contract year but cannot be made before the end of such year. In the event that the Secretary and the Concessioner cannot agree upon an adjustment of the franchise fees within 120 days from the date of the request for renegotiation as made by either party, the position of the Concessioner must be reduced to writing within 30 days therefrom and submitted to the Secretary for a determination of appropriate fees consistent with the fair value of any assigned Government Improvements and the probable value to the Concessioner of the privileges granted by this contract based upon reasonable opportunity for a profit in relation to both gross receipts and capital invested. If desired by the Concessioner an advisory arbitration panel will be established (one member to be selected by the Secretary, one by the Concessioner, and the third by agreement of the original two) for the purpose of recommending to the Secretary appropriate franchise fees. The Secretary and the Concessioner shall share equally the expenses of such advisory arbitration. The written determination of the Secretary as to franchise fees shall be final and conclusive upon the parties hereto. Any new fees established will be retroactive to the commencement of the applicable period for which notice of reconsideration is given and be effective for the remaining term of the contract unless subsequent negotiations establish yet a different franchise rate. If new rates are greater than existing rates, the Concessioner will pay all back fees due with the next regular payment. If new rates are less than the existing rate the Concessioner may withhold the difference between the two rates from future payments until he has recouped the overpayment. Any new franchise fees will be evidenced by an amendment to the contract unless based upon the written determination of the Secretary in which event a copy of the determination will be attached hereto and become a part hereof, as fully as if originally incorporated herein.

SEC. 10. BOND AND LIEN. The Secretary may, in his discretion, require the Concessioner to furnish a surety bond acceptable to the Secretary conditioned upon the faithful performance of this contract, in such form and in such amount as the Secretary may deem adequate. As

additional security for the faithful performance by the Concessioner of all of its obligations under this contract, and the payment to the Government of all damages or claims that may result from the Concessioner's failure to observe such obligations, the Government shall have at all times the first lien on all assets of the Concessioner within the area.

SEC. 11. TERMINATION. (a) The Secretary may terminate this contract in whole or part for default at any time and may terminate this contract in whole or part when necessary for the protection of visitors or area resources. The operations authorized hereunder may be suspended in whole or in part at the discretion of the Secretary when necessary to protect the health and safety of visitors and employees or to protect area resources. Termination or suspension shall be by written notice to the Concessioner and, in the event of proposed termination for default, the Secretary shall give the Concessioner a reasonable period of time to correct stated deficiencies. Termination for default shall be utilized in circumstances where the Concessioner has breached any requirements of this contract, including failure to maintain and operate the required accommodations, facilities and services to the satisfaction of the Secretary in accordance with the Secretary's requirements hereunder.

(b) In the event of termination of this contract when necessary for the protection of visitors or area resources or for default, the compensation to the Concessioner for such termination shall be as described in Section 12, "Compensation."

(c) In the event it is deemed necessary to suspend operations hereunder in whole or in part to protect the visitors or resources of the area the Secretary shall not be liable for any compensation to the Concessioner for losses occasioned thereby, including but not limited to, lost income, profit, wages, or other monies which may be claimed.

(d) To avoid interruption of service to the public upon the expiration or termination of this contract for any reason, the Concessioner, upon the request of the Secretary, will (1) continue to conduct the operations authorized hereunder for a reasonable time to allow the Secretary to select a successor, or (2) consent to the use by a temporary operator, designated by the Secretary, of the Concessioner's Improvements and personal property, if any, not including current or intangible assets, used in the operations authorized hereunder upon fair terms and conditions, provided that the Concessioner shall be entitled to an annual fee for the use of such improvements and personal property, plus a return on the book value of such improvements and personal property equal to the prime lending rate at the time of its use, as published by

the Federal Reserve System Board of Governors or as agreed upon by the parties involved. In this instance the method of depreciation used shall be either straight line depreciation or depreciation shown on Federal Tax Returns.

SEC. 12. COMPENSATION. (a) Just Compensation: The compensation described herein shall constitute full and just compensation to the Concessioner from the Secretary for all losses and claims occasioned by the circumstances described below.

(b) Contract expiration or termination where operations are to be continued: If for any reason, including contract expiration or termination as described herein, and subject to the limitation on compensation for possessory interest contained in subsection (d) hereof, the Concessioner shall cease to be required by the Secretary to conduct the operations authorized hereunder, or substantial part thereof, and, at the time of such event the Secretary intends for substantially the same or similar operations to be continued by a successor, whether a private person, corporation or an agency of the Government, (i) the Concessioner will sell and transfer to the successor designated by the Secretary its possessory interest in Concessioner and Government Improvements, if any, as defined under this contract, and all other property of the Concessioner used or held for use in connection with such operations; and (ii) the Secretary will require such successor, as a condition to the granting of a contract to operate, to purchase from the Concessioner such possessory interest, if any, and such other property, and to pay the Concessioner the fair value thereof. The fair value of any possessory interest in Government Improvement and Concessioner Improvements shall be book value as described in Section 12(c) hereof. In the event that such possessory interest in Government Improvements is acquired by a successor, the successor will not be permitted to revalue such possessory interest. The fair value of merchandise and supplies shall be replacement cost including transportation. The fair value of equipment shall be replacement cost less depreciation and obsolescence. If the Concessioner and the successor, excepting Government agencies, cannot agree upon the fair value of any item or items, either party may serve a request for arbitration upon the other party, and the fair value of the item or items in question shall be determined by the majority vote of a board of three arbitrators, selected as follows: Each party shall name one member of such board and the two members so named shall select the third member. If either party fails to appoint an arbitrator within 15 days after the other shall have appointed an arbitrator and served written notice, including the name and address of the arbitrator appointed, upon the other party, then the American Arbitration Association shall be requested by the Secretary to appoint an arbitrator to represent the party failing to make the

appointment. The costs and expenses of the arbitrator appointed by the American Arbitration Association to represent the party failing to make the appointment shall be paid for by that party. The two arbitrators so named shall select the third member. If the third member is not selected within 15 days after the appointment of the latter of the other two arbitrators, the American Arbitration Association shall be requested by the Secretary to appoint the third arbitrator. In requesting that the American Arbitration Association appoint an arbitrator in the situations discussed above, the Secretary shall request that the person or persons appointed shall be impartial and specially qualified in commercial and real estate appraisal. The fair value determined by the Board of Arbitrators shall be binding on the parties. The compensation and expenses of the third member shall be paid by the Concessioner and one-half of the amount so paid shall be added to the purchase price. Before reaching its decision, the board shall give each of the parties a fair and full opportunity to be heard on the matters in dispute. If the successor is a Government agency and there is a dispute as to the fair value of any possessory interest, or other items, an advisory arbitration panel will be established at the request of the Concessioner (one member to be selected by the Secretary, one by the Concessioner, and the third by agreement of the original two) for the purpose of recommending to the Secretary an appropriate fair value. The Secretary and the Concessioner shall share equally the expenses of such advisory arbitration. The written decision of the Secretary as to such fair value will be final and binding upon all parties.

(c) Contract expiration or termination where operations are to be discontinued: If for any reason, including contract expiration or termination as described herein, the Concessioner shall cease to be required by the Secretary to conduct the operations authorized hereunder, or substantial part thereof, and the Secretary at the time chooses to discontinue such operations, or substantial part thereof within the area, and/or to abandon, remove, or demolish any of the Concessioner's Improvements, if any, then the Secretary will take such action as may be necessary to assure the Concessioner of Compensation for (i) its possessory interest in Concessioner Improvements, and Government Improvements, if any, in the amount of their book value (unrecovered costs as shown in Federal Income Tax Returns); (ii) the cost to the Concessioner of restoring any assigned land to a natural condition, including removal and demolition, (less salvage) if required by the Secretary; and (iii) the cost of transporting to a reasonable market for sale such movable property of the Concessioner as may be made useless by such determination. Any such property that has not been removed by the Concessioner within a reasonable time following such determination shall become the property of the United States without compensation therefore.

(d) Contract Termination for Default for Unsatisfactory Performance Where Operations are to be Continued. Notwithstanding any provision of this contract to the contrary, in the event of termination of this Contract for default for failure to maintain and operate the required accommodations, facilities and services to the satisfaction of the Secretary in accordance with the Secretary's requirements hereunder, compensation for the Concessioner's possessory interest in Concessioner's Improvements, if any, shall be at book value as described in Subsection 12(c) herein.

(e) Other Compensation. In the event of termination of this contract or portions thereof, for the purpose of protecting visitors or area resources the concessioner may be compensated (in addition to the applicable compensation described in subsections (b) or (c) above) for such other costs as the Secretary, in his discretion, considers necessary to compensate the Concessioner for actual losses occasioned by such termination, including, but not limited to, and as the needs appear, cost of relocating from one building to another building, reasonable severance pay to employees that may be affected, penalties for early loan repayments, and reasonable overhead expenses required by such termination, but, not for lost profit or other anticipated gain from the operations authorized hereunder or anticipated sale or assignment of the Concessioner's assets, including this contract or any of its benefits.

SEC. 13. ASSIGNMENT OR SALE OF INTERESTS. (a)(1) The Concessioner and/or any person or entity which owns a controlling interest (as herein defined) in a Concessioner's ownership, (collectively defined as the "Concessioner" for the purposes of this section) shall not assign or otherwise sell or transfer responsibilities under this Contract or the concession operations authorized hereunder, nor sell or otherwise assign or transfer (including, without limitation mergers, consolidations, reorganizations or other business combinations) a controlling interest in such operations, this contract, or a controlling interest in the Concessioner's ownership, as defined herein, without the prior written approval of the Secretary. Failure to comply with this provision or the procedures described herein shall constitute a material breach of this Contract for which this Contract may be terminated immediately by the Secretary without regard to the procedures for termination for default described in Section 11 hereof, and, the Secretary shall not be obliged to recognize any right of any person or entity to an interest in this Contract or to own or operate the operations authorized hereunder acquired in violation hereof.

(2) The Concessioner shall advise the person(s) or entity proposing to enter into a transaction described in Subsection

(a)(1) above that the Secretary shall be notified and that the proposed transaction is subject to review and approval by the Secretary. The Concessioner shall request in writing the Secretary's approval of the proposed transaction and shall promptly provide the Secretary all relevant documents related to the transaction, and the names and qualifications of the person(s) or entity involved in the proposed transaction.

(b)(1) The Secretary, in exercising the discretionary authority set forth herein, shall among other matters, take into consideration the management qualifications of individuals or entities which would thereby obtain an interest in the facilities or services authorized hereunder, the experience of such individuals or entities with similar operations, and the ability of such individuals or entities to operate the concession operations authorized hereunder in the public interest under the regulation of the Secretary.

(2) For purposes of this section, the term "controlling interest" in a Concessioner's ownership shall mean in the instance of a corporate concessioner, an interest beneficial or otherwise, of sufficient outstanding voting securities or capital of the Concessioner so as to permit exercise of substantial managerial influence over the operations of the concessioner, and, in the instance of a partnership, limited partnership, joint venture or individual entrepreneurship, any beneficial ownership of the capital assets of the Concessioner sufficient to permit substantial managerial influence over the operations of the Concessioner. The Secretary will determine at the request of interested parties whether or not an interest in a Concessioner constitutes a controlling interest within the meaning hereof.

(c) The Concessioner may not enter into any agreement with any entity or person except employees of the Concessioner to exercise substantial management responsibilities for the operation authorized hereunder or any part thereof without written approval of the Secretary at least 30 days in advance of such transaction.

(d) No mortgage shall be executed, and no bonds, shares of stock, or other evidence of interest in, or indebtedness upon, the assets of the concessioner, including this contract, in the area, shall be issued, except for the purposes of installing, enlarging or improving, plant equipment and facilities, provided that, such assets, including possessory interests, or evidences of interests therein, in addition, may be encumbered for the purposes of purchasing existing concession plant, equipment and facilities. In the event of default on such a mortgage, encumbrance, or such other indebtedness, or of other assignment transfer, or encumbrance, the creditor or any assignee thereof, shall succeed to the interest of the Concessioner in such assets but shall not thereby acquire operating rights or privileges which shall be subject to the disposition of the Secretary.

SEC. 14. APPROVAL OF SUBCONCESSION CONTRACTS. All contracts and agreements (other than those subject to approval pursuant to Section 13 hereof) proposed to be entered into by the Concessioner with respect to the exercise by others of the privileges granted by this contract in whole or part shall be considered as subconcession contracts and shall be submitted to the Secretary for his approval and shall be effective only if approved. In the event any such subconcession contract or agreement is approved the Concessioner shall pay to the Secretary within ninety (90) days after each fiscal year ending between the 10th and 25th day of December, inclusive, a sum equal to fifty percent (50%) of any and all fees, commissions, or compensation payable to the Concessioner thereunder, which shall be in addition to the franchise fee payable to the Secretary on the gross receipts of subconcessioners as provided for in Section 9 of this contract.

SEC. 15. INSURANCE AND INDEMNITY.

(a) General

The Concessioner shall save, hold harmless, defend and indemnify the United States of America, its agents and employees for losses, damages or judgments and expenses on account of fire or other peril, bodily injury, death or property damage, or claims for bodily injury, death or property damage of any nature whatsoever, and by whomsoever made, arising out of the activities of the Concessioner, his employees, sub-contractors or agents under the contract. The types and amounts of insurance coverage purchased by the Concessioner shall be approved by the Secretary. The Concessioner shall, annually, or at the time insurance is purchased provide the Secretary with Certificates of Insurance, Broker's Analysis or similar documents sufficient to evidence compliance with this section and shall provide the Secretary thirty (30) days advance written notice of any material change in the concessioners insurance program hereunder.

(b) Property Insurance

The Concessioner at its cost shall secure and maintain for both Concessioner improvements and assigned government improvements, fire, extended coverage and such other perils insurance in such types and limits as are determined by the Secretary to be necessary to repair or replace those buildings, structures, equipment, furnishings, betterments and improvements, and merchandise necessary to satisfactorily discharge the Concessioner's obligations under this Contract. For insurance purposes, values of such property shall be determined at the inception of this contract and updated annually thereafter. Those values currently in effect are set forth in Exhibit "E" to this contract. Such insurance

shall provide for the Concessioner and the United States of America to be named insureds as their interest may appear. Insurance provisions respecting replacement at the "same site" shall be waived. In the event of loss the Concessioner shall use all proceeds of such insurance to repair, rebuild, restore or replace Concessioner and Government Improvements, equipment, furnishings and other personal property hereunder as directed by the Secretary. The lien provision of Section 10 shall apply to such insurance proceeds.

The Concessioner shall purchase the following additional property coverages: Boiler and Machinery

(c) Additional Property Damage
Requirements—Government Improvements,
Property and Equipment

The following additional requirements shall apply to structures, all or any part of which are "government improvements" as defined in Section 4(b).

(1) The insurance policy shall contain a loss payable clause approved by the Secretary which provides that insurance proceeds shall be paid directly to the Concessioner without requiring endorsement by the United States.

(2) The use of insurance proceeds for repair or replacement of government structures will not alter their character as government structures and the concessioner shall gain no possessory interest therein.

(d) Public Liability

The Concessioner shall purchase and maintain during the term of this contract Comprehensive General Liability insurance against claims occasioned by actions or omissions of the Concessioner in carrying out the activities and operations authorized hereunder. Such insurance shall be in the amount commensurate with the degree of risk and the scope and size of such activities authorized herein, but in any event not less than (\$1,000,000) for bodily injury per person and (\$1,000,000) per accident and property damage of at least (\$500,000) per occurrence. All liability policies are to specify that the insurance company shall have no right of subrogation against the United States of America except that caused by the sole negligence of the United States or its employees and have no recourse against the government for payment of any premiums or assessments.

Specific types of coverages the Concessioner shall purchase and maintain during the term of this contract include Comprehensive General Liability, with extensions which provide Product Liability and Contractual Liability and Liquor Liability if liquor is served.

The Concessioner shall also obtain the following additional coverages:

(1) Automobile Liability: The Concessioner shall provide the following coverages respecting vehicles owned (including Trams) and/or operated by the Concessioner: Comprehensive Automobile Liability, Uninsured Motorist coverages, and Statutory "No-Fault" coverages, as required by the state of operation.

(2) Workers' Compensation: Statutory Workers' Compensation as required in the state of operation, Employers' Liability coverage, (Broad Form "All State" coverage, if the Concessioner operates in more than one state), Voluntary Compensation endorsement, and (Employers' Liability in states with monopolistic Workers' Compensation funds).

(3) Other: The Concessioner shall also obtain the following coverages, in at least the limits set forth for Comprehensive General Liability: Combined Overall General Liability not less than \$3,000,000.

SEC. 16. PROCUREMENT OF GOODS, EQUIPMENT, AND SERVICES. In computing net profits for any purposes of this contract, the Concessioner agrees that its accounts will be kept in such a manner that there will be no diversion or concealment of profits in the operations authorized hereunder by means of arrangements for the procurement of equipment, merchandise, supplies, or services from sources controlled by or under common ownership with the Concessioner or by any other device.

SEC. 17. DISPUTES. (a) Except as otherwise provided in this contract, any dispute, or claim, concerning this contract which is not disposed of by agreement shall be decided by the Director, National Park Service, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Concessioner. The decision of the Director shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Concessioner mails or otherwise furnishes to the Director a written notification of appeal addressed to the Secretary. In accordance with the rules of the Board of Contract Appeals, the decision of the Secretary or his duly authorized representative for the determination of such appeals, shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to

imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Concessioner shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute or claim hereunder, the Concessioner shall proceed diligently with the performance of the contract or as otherwise required in accordance with the Director's decision.

Claims shall be considered hereunder only if a notice is filed in writing with the Director within 30 days after the Concessioner knew or should have known of the facts or circumstances giving rise to the claim.

(b) This section does not preclude consideration of legal questions in connection with decisions provided for in paragraph (a) above; provided, that nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

(c) The provisions of this clause shall not apply to any claim of a precontractual nature nor of a non-contractual nature such as tort claims, nor with respect to discretionary acts or refusals to act by the United States, including but not limited to the establishment of utility rates and rates to the public hereunder and terminations or suspensions of the contract for protection of visitors or area resources nor to any other discretionary relief or action, nor in relation to action or inaction by the United States in its sovereign capacity. Decisions of the Director, National Park Service, concerning the matters mentioned in this subsection shall be final administrative determinations.

SEC. 18. GENERAL PROVISIONS. (a) Reference in this contract to the "Secretary" shall mean the Secretary of the Interior, and the term shall include his duly authorized representatives.

(b) The Concessioner is not entitled to be awarded or to have sole negotiating rights to any Federal procurement or service contract by virtue of any provision of this contract.

(c) Notwithstanding any other provision hereof, the Secretary reserves the right to provide directly or through cooperative or other non-concession agreements with non-profit organizations any accommodations, facilities or services to area visitors which are part of and appropriate to the park interpretive program.

(d) That any and all taxes which may be lawfully imposed by any State or its political subdivisions upon the property or business of the Concessioner shall be paid promptly by the Concessioner.

(e) No member of, or delegate to, Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

(f) This contract may not be extended, renewed or amended in any respect except when agreed to in writing by the Secretary and the Concessioner.

IN WITNESS WHEREOF, the parties hereto have hereunder subscribed their names and affixed their seals.

Dated at Lakewood, Colo., this 6th
day of December, 1984.

UNITED STATES OF AMERICA

BY *Jack Neuhel*
Acting Regional Director
Rocky Mountain Region

ATTEST:

BY *William H. Parker*
TITLE *Secretary*

TW Services, Inc.

BY *George B. Inez*
TITLE *President*
DATE _____

Page 1 of Exhibit A
Zion Lodge Development Plan
(see See 1(b))

Appears to be missing

2. Clothes racks, rods or luggage racks affixed to the structure.
3. Wall or floor finishes, including wall-to-wall installed carpeting.

LODGE STRUCTURES

DINING ROOM(S) - COCKTAIL LOUNGE - GIFT SHOP - GROCERY STORE

All affixed improvements including, but not limited to:

1. Waitress/waiter stands.
2. All shelving, racks.
3. All exhaust or intake air conditioning equipment (heating, cooling, or circulation) including motors, motor controls, canopies, vents, grates, grills, ducts.
4. Cocktail bar, back bar, shelving.
5. Salad bar(s).

KITCHEN(S)

All affixed improvements including, but not limited to:

1. All stainless steel or other metal equipment fabricated, affixed and/or installed as an integral part of the structure. Included are grill and broiler stands, steam table(s), affixed stainless steel counter tops, sinks, various work areas, protective wall panels, stoves, ovens, ranges, dishwashers, grills, salad tables (bain Marie), fire prevention/suppression systems, and other affixed equipment.
2. All wood or metal shelving, and their supports.
3. All walk-in refrigerators, freezers, and their associated compressors, lines, evaporators.

ITEMS CONSIDERED AS "PERSONALTY" IN NATURE PURSUANT TO SEC. 5(d)

1. All inventories of foodstuffs, beverages, groceries, gift shop merchandise, propane gas, auto fuels and auto supplies and other inventories primarily held for resale or local consumption.
2. All advertising or other printed materials as brochures, maps, menus, guest checks, stationery.
3. All office equipment and supplies including adding machines or calculators, stationery, billing materials, file cabinets, paper goods, free standing safes (except "furniture").

4. All food, beverage and other retail licenses including seasonal alcoholic beverage licenses.
5. All motor or other vehicles including automobiles, trucks, trailers, travel trailers, mobile homes, hand trucks, carts.
6. All small power or hand tools, ladders and other small equipment, paints and other supplies held for maintenance and repairs.
7. All weight scales, ice machines.
8. All non-affixed readily removable "reach-in" type refrigerators, freezers.
9. All readily removable, non-affixed shelving, cabinets, racks, tables.
10. All clothes/linen washers and dryers.
11. All pots, pans, ladles, spoons, trays, baking pans, bowls, whips, and other small equipment.
12. All non-affixed coffee warmers, urns, and other beverage dispensing or holding equipment.
13. All non-affixed grills, ovens, microwave ovens, broilers, ranges, mixers, slicers, and other food handling preparation, warming, or holding equipment not built in as an integral portion of the structure.
14. All tables, chairs, benches, beds, bedframes and headboards, nightstands, chests, dressers, desks, sofas, stools in lodging.
15. All (non-affixed) tables, chairs, sidestands, cash register stands, booths, stools, bar and back bar, desks, in restaurants.
16. Various food service equipment (non-affixed) including food preparation/work tables or stands, dishracks, free standing racks/shelving and china, glassware, silverware, pots and pans, bowls, toasters, milk machines, ice cream type freezers, ice machines, hand trays, cash registers, office equipment and supplies.
17. Various lodging items including linens, bedspreads, blankets, pillows, mattress covers, towels, washcloths, drapes, shower curtains.

ITEMS CONSIDERED AS "FURNITURE" PURSUANT TO SEC. 5(c)(d)

GENERAL

ALL ITEMS OR FURNITURE DIRECTLY USED BY GUESTS OF EMPLOYEES OF THE VARIOUS FACILITIES:

Inclusive of:

1. LODGING: Tables, chairs, benches, beds, bedframes and headboards, night-stands, chests, dressers, desks, sofas, stools.
2. RESTAURANT(S): Tables, chairs, sidestands, cash register stands, booths, stools, bar and back bar, desks.

But exclusive of:

1. Various food service equipment (non-affixed) including food preparation/ work tables or stands, china glassware, silverware, pots and pans, bowls, dishracks, toasters, milk machines, ice cream type freezers, ice machines, hand trays, cash registers, office equipment and supplies, free standing racks/shelving.
2. Various lodging items including linens, bedspreads, blankets, pillows, mattress covers, towels, washcloths, drapes, shower curtains.

The parties hereto have hereunder subscribed their names to this agreement this day of December 6, 1984.

TW Services, Inc.

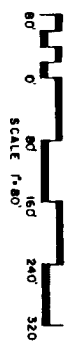
By: George B. Joney
Title: President

United States of America

By: Jack Heshel
Regional Director, RMR

80' 0' 80' 160' 240' 320'

SCALE 1"=80'



REMOVE EXIST.
CABINS AND
UTILITY'S by owner/owner

[illegible]

EXHIBIT "B"

Concession
Contract No.: _____

NONDISCRIMINATION

SECTION I

Requirements Relating to Employment
and
Service to the Public

A. EMPLOYMENT: During the performance of this contract, the Concessioner agrees as follows:

(1) The Concessioner will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Concessioner will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Concessioner agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Secretary setting forth the provisions of this nondiscrimination clause.

(2) The Concessioner will, in all solicitations or advertisements for employees placed by or on behalf of the Concessioner, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The Concessioner will send to each labor union or representative of workers with which the Concessioner has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Secretary, advising the labor union or workers' representative of the concessioner's commitments under Section 202 of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and shall post copies of and notice in conspicuous places available to employees and applicants for employment.

(4) The Concessioner will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Concessioner will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to the Concessioner's books, records, and accounts by the Secretary of the Interior and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Concessioner's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the Concessioner may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Concessioner will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, so that such provisions will be binding upon each subcontractor or vendor. The Concessioner will take such action with respect to any subcontract or purchase order as the Secretary may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the Concessioner becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Secretary, the Concessioner may request the United States to enter into such litigation to protect the interests of the United States.

B. CONSTRUCTION, REPAIR, AND SIMILAR CONTRACTS:

The preceding provisions A(1) through (7) governing performance of work under this contract, as set out in Section 202 of Executive Order No. 11246, dated September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, shall be applicable to this contract, and shall be included in all contracts executed by the Concessioner for the performance of construction, repair, and similar work contemplated by this contract, and for that purpose the term "contract" shall be deemed to refer to this instrument and to contracts awarded by the Concessioner and the term "Concessioner" shall be deemed to refer to the Concessioner and to contractors awarded contracts by the Concessioner.

C. FACILITIES: (1) Definitions: As used herein:

(i) Concessioner shall mean the Concessioner and its employees, agents, lessees, sublessees, and contractors, and the successors in interest of the Concessioner; (ii) facility shall mean any and all services, facilities, privileges, and accommodations, or activities available to the general public and permitted by this agreement.

(2) The Concessioner is prohibited from: (i) publicizing facilities operated hereunder in any manner that would directly or inferentially reflect upon or question the acceptability of any person because of race, color, religion, sex, or national origin; (ii) discriminating by segregation or other means against any person because of race, color, religion, sex, or national origin in furnishing or refusing to furnish such person the use of any such facility.

(3) The Concessioner shall post a notice in accordance with Federal regulations to inform the public of the provisions of this subsection, at such locations as will ensure that the notice and its contents will be conspicuous to any person seeking accommodations, facilities, services, or privileges. Such notice will be furnished the Concessioner by the Secretary.

(4) The Concessioner shall require provisions identical to those stated in subsection C herein to be incorporated in all of the Concessioner's contracts or other forms of agreement for use of land made in pursuance of this agreement.

SECTION II: EMPLOYMENT OF THE HANDICAPPED

Within 120 days of the commencement of a contract every Government contractor or subcontractor holding a contract that generates gross receipts which exceed \$50,000 or more and having 50 or more employees shall prepare and maintain an affirmative action program at each establishment which shall set forth the contractor's policies, practices and procedures in accordance with the affirmative action program requirement.

PART A

The contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: Employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

PART B

The contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

PART C

In the event of the contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Act.

PART D

The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.

PART E

The contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.

PART F

The contractor will include the provisions of this clause in every subcontract that generates gross receipts which exceed \$2,500 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

EXHIBIT "C"

Concession Contract CC-ZION003-84
TW Recreational Services, Inc.

The following lands and government owned buildings are assigned pursuant to
Concession Contract CC-ZION003-84:

Section A - Government Owned Buildings

Annual Use Fee is expressed as a percentage of adjusted gross receipts as
defined in the contract.

<u>Description</u>	<u>Annual Use Fee</u>
<u>Historic Buildings</u>	
Male Dormitory 209	.040
5 Western Cottages (fourplex) 206, 207, 210, 216, 217	.070
10 Western Cottages (duplex) 211-215, 218-222	.070
Female Dormitory 208	.040
Maintenance Shed - Dormitory Area 552	
<u>Other Buildings</u>	
Chalet Dormitory 118	.020
Zion Lodge 224	.200
Building 120, 500, and 550	.013
New Dormitory 223	.047
TOTAL	<u>.500 %</u>

Exhibit "C"

Concession Contract CC-ZION003-84

Page 2

Section B - Land Assignment

Pursuant to the contract, the Concessioner is assigned lands as depicted on the attached drawing and as follows:

The north end of the land assignment boundary line begins at the main canyon road at the drainage swale north of the lodge parking lot, follows the top of slope of the drainage to its highest point, then goes in a straight line to the large boulder by the water meter vault, then to the toe of slope of the canyon wall. (Land assignment area includes area known as "Cooks Hill".) Land assignment line follows toe of slope to retaining wall behind Motel Building B, follows the retaining wall to its end, then goes in a straight line to an area five feet from the northeast edge of the women's dormitory building, continues at a distance of five feet from the back wall of the building to the top of the rock steps then to the dormitory emergency vehicle driveway, and follows the east edge of the driveway to the toe of the slope. The line follows the toe of the slope around to the south edge of the ravine at the south end of the employee RV park, then at a point even with the west edge of RV site #4 the line goes straight to the north end of the main road pullout, and follows the east edge of the main road until it joins the beginning line to the north.

TW RECREATIONAL SERVICES, INC.

UNITED STATES OF AMERICA

By: Paul Trammel

By: Burt M. Miller, acting
Regional Director
Rocky Mountain Region

Title: Vice President & General Manager

Date: 10/18/91

Date: NOV 5 1991

EXHIBIT "C"
GOVERNMENT-OWNED STRUCTURES ASSIGNED TO
TW SERVICES, INC.

pursuant to

CONCESSION CONTRACT NO. 1590-04-0002

superseded

HISTORICAL BUILDINGS

<u>Building Number</u>	<u>Description</u>	<u>Annual Fee Each</u>	<u>Total</u>
506	Male Dormitory		\$1,664
500-511, 530-539	5 Western (fourplex) Cottages (20 units)	608	3,040
512-521, 530-539	10 Duplex Cottages (20 units)	304	3,040
1-22	11 Employee Quarters (11 units)	102.50	1,127.50
505	Female Dormitory		1,824
552	Mattress Shed		32
	Historical Building Sub-Total		<u>\$10,727.50</u>

OTHER BUILDINGS

118	Chalet		1,184
600	Zion Lodge (excluding counter space in the lobby area for horse concessioner ticket sales)		12,000
120	Vegetable and Beverage Building		16
500	Storage Shed (bake shop)		25.50
550	Machine Shop - 5 stall shed (Birch Creek)		352
	Other Building Sub-Total		<u>\$13,577.50</u>

TOTAL

~~\$24,817.50~~

\$24,305

Superseded

EXHIBIT "C"

Government Owned Structures
Assigned Pursuant to Section 4
Concession contract CC-ZION003-84
TW Recreational Service, Inc.

Annual Use Fee is expressed as a percentage of adjusted gross receipts as defined in the contract.

<u>Description</u>	<u>Annual Use Fee</u>
<u>Historic Buildings</u>	
Male Dormitory 209	.040
5 Western Cottages (fourplex) 206, 207, 210, 216, 217	.070
10 Western Cottages (duplex) 211-215, 218-222	.070
Female Dormitory 208	.040
Maintenance Shed - Dormitory Area 87	
<u>Other Buildings</u>	
Chalet Dormitory 118	.020
Zion Lodge 224	.200
Building 120, 500, and 86	.013
New Dormitory	.047
TOTAL	<u>.500 %</u>

TW RECREATIONAL SERVICES, INC.

BY: *[Signature]*

TITLE: *Pres. T.W. Rae Sr.*

DATE: *Aug. 24, 1989*

UNITED STATES OF AMERICA

BY: *Lorraine McIntyre*

Regional Director
Rocky Mountain Region

DATE: *Aug 24, 1989*



Zion Lodge- Assigned Property Areas For Development Plan

LIMITS OF ASSIGNED PROPERTY
AREA FOR CONSTRUCTION PURPOSES -
CONCESSIONER IS RESPONSIBLE FOR
CONSTRUCTION OF UTILITIES, WALKS, TRAILS,
LANDSCAPING, ROADS, BUILDINGS, REMODELING,
PARKING AREAS, AND ASSOCIATED SITE WORK.
WITHIN THE ASSIGNED PROPERTY AREA.

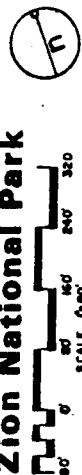
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EXHIBIT "C"

GOVERNMENT-OWNED STRUCTURES ASSIGNED TO

superseded pursuant to

CONCESSION CONTRACT NO. _____

<u>Building Number</u>	<u>Description</u>	<u>Annual Fee</u>	
		<u>Each</u>	<u>Total</u>
<u>Historical Buildings</u>			
506	Male Dormitory		\$1,664
500-511, 530-539	5 Westerner (Fourplex) Cottages (20 units)	608	3,040
512-521, 530-539	10 Duplex Cottages (20 units)	304	3,040
200-251, 254-277, 294-297	40 Frontier Cabins (80 units)	112	4,480
278-293	8 Pioneer Cabins (8 units)	102.50	820
119	Manager's Cabin		144
298-307, 1-12, 14-23	16 Employee Quarters (16 units)	102.50	1,640
505	Female Dormitory		1,824
552	Cot Shed Mattress Shed		32
504	Cot Shed		6.50
503	Linen Cabin		22.50
502	Dirty Linen Room		45
Historical Building Sub-Total			<u>16,758</u>

Building Number	Description	Annual Fee	
		Each	Total

Other Buildings

118	Chalet		1,184
600	Zion Lodge (excluding counter space in the lobby area for horse con- cessioner ticket sales)		12,000
120	Vegetable and Beverage Building		16
500	Storage Shed (bake shop)		25.50
550	Machine Shop - 5 stall shed (Birch Creek)		352
252/253	Maintenance Shed		25.50
24/25	Dispensary (first aid)		<u>102.50</u>

Other Building
Sub-Total \$13,705.50

TOTAL \$30,463.50

TW Services, Inc.

By

Title

Date

George B. Joney
President
May 15, 1984

UNITED STATES OF AMERICA

Paul H. Schuch
Regional Director

Rocky Mountain Region

ACTING

EXHIBIT "C"

0 1 2 Miles

Legend:

- Barracks
- Mountain Lodge
- North Fork Virgin River
- Sierra Nevada
- Sierra Nevada National Monument
- Sierra Nevada National Forest
- Sierra Nevada National Park
- Sierra Nevada National Preserve

(NTS)

Zion National Park

EXHIBIT "D"

Pursuant to Subsection 6(a)

"NONE"

EXHIBIT "E"

BUILDING REPLACEMENT COSTS FOR INSURANCE PURPOSES

CONCESSIONER: TW Recreational Services, Inc.
 CONCESSION CONTRACT NO.: CC-ZION003-84

The replacement costs set forth herein are established for the sole purpose of ensuring adequate property insurance coverage and shall not be construed as having application for any other purpose.

<u>Building No.</u>	<u>Description</u>		<u>Insurance Replacement Value</u>
		<u>Each</u>	<u>Total</u>
224✓	Zion Lodge Building		\$1,649,172
225	Motel Building "A"		\$1,326,966
226✓	Motel Building "B"		\$2,292,077
500✓	Storage Shed		\$4,314
120✓	Vegetable Shed		\$3,468
552✓	Maintenance (Mattress) Shed		\$7,973
550✓	Machine Shop		\$12,688
118✓	Chalet Dormitory		\$162,023
223✓	New Dormitory		\$722,183
208✓	Women's Dormitory		\$309,308
209✓	Men's Dormitory		\$293,473
211-215✓	10 Western Cabins (duplex)	\$44,618	\$446,180
218-222✓			
206, 207, 210, 216, 217✓	5 Western Cabins (fourplex)	\$76,875	\$384,375
		TOTAL:	\$7,614,200

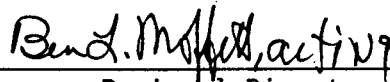
TW RECREATIONAL SERVICES, INC.

UNITED STATES OF AMERICA

By:



By:



Regional Director
 Rocky Mountain Region

Title: Vice President & General ManagerDate: 10/18/91

Date:

NOV 2 1991

Superseded by EXHIBIT "E" dated 11-5-91
(First Revision - January, 1989)

BUILDING REPLACEMENT COST FOR INSURANCE PURPOSES

CONCESSIONER: TW Recreational Services, Inc.

CONCESSION CONTRACT: CC-ZION 003-84

FOR THE OPERATING YEAR: STARTING January, 1989

AND ENDING when replacement costs reassessed

The replacement costs set forth herein are established for the sole purpose of insuring adequate property insurance coverage and shall not be construed as having application for any other purpose.

I. GOVERNMENT BUILDINGS

<u>Building No.</u>	<u>Description</u>	<u>Insurance Replacement Value</u>	
		<u>Each</u>	<u>Total</u>
209	1 Male Dormitory		\$ 280,500
206,207,210,216,217	5 Westerner (Fourplex Cottages) (20 units)	74,500	372,500
211-215,218-222	10 Duplex Cottages (20 units)	42,700	427,000
208	1 Female Dormitory		289,000
118	1 Chalet		162,300
224	1 Zion Lodge		1,578,400
120	1 Vegetable and Beverage Building		3,100
-	New Dormitory		685,600
-	Motel Building "A"		1,265,800
-	Motel Building "B"		2,195,200
86	1 Warehouse (Machine Shop)		12,900
87	1 maintenance Shop (Mattress Shed)		7,800
205	1 Storage Shed (Bake Shop)		4,100
TOTAL			<u>\$7,284,200</u>

TW Recreational Services, Inc.

By *[Signature]*

Title *President*

Date *July 17th 1989*

UNITED STATES OF AMERICA

Lorraine Mintzmeier
Regional Director,
Rocky Mountain Region

EXHIBIT "E"

Superseded
BUILDING REPLACEMENT COST FOR INSURANCE PURPOSES

CONCESSIONER: _____

CONCESSION CONTRACT NO.: _____

FOR THE OPERATING YEAR: STARTING _____

AND ENDING _____

The replacement costs set forth herein are established for the sole purpose of insuring adequate property insurance coverage and shall not be construed as having application for any other purpose.

I. GOVERNMENT BUILDINGS

<u>Building No.</u>	<u>Description</u>	<u>Insurance Replacement Value</u>	
		<u>Each</u>	<u>Total</u>
506	1 Male Dormitory		322,560
500-511, 522-529	5 Westerner (Fourplex Cottages) (20 units)	119,600	598,000
512-521, 530-539	10 Duplex Cottages (20 units)	59,800	598,000
200-251, 254-277, 294-297	40 Frontier Cabins (80 units)	22,750	910,000
278-293	8 Pioneer Cabins (16 units)	22,750	182,000
119	1 Manager's Cabin	23,400	23,400
298-307, 1-12, 14-23	16 Employee's Quarters (16 units)	20,540	328,640
505	1 Female Dormitory		401,280
118	1 Chalet		199,080
600	1 Zion Lodge		1,928,880
24/25	1 Dispensary (first aid)		20,540
120	1 Vegetable and Beverage Building		9,600

Continued:

<u>Building No.</u>	<u>Description</u>	<u>Insurance Replacement Value</u>	
		<u>Each</u>	<u>Total</u>
550	1 Machine Shop		41,760
252/253	1 Maintenance Shed		9,480
552	1 Mattress Shed		11,160
504	1 Cot Shed		2,400
503	1 Linen Cabin		9,480
502	1 Dirty Linen Room		11,880
500	1 Storage Shed (bake shop)		20,475

TOTAL: \$5,628,615

TW Service, Inc.
 By Dennis B. Joney
 Title President
 Date May 15, 1984

UNITED STATES OF AMERICA

John Dechule
 Acting Regional Director, RMR

EXHIBIT H - CONCESSION CONTRACT IMPROVEMENT ACCOUNT CONTROL PROCEDURES

INTRODUCTION

For the purposes of this Exhibit, the term "Superintendent" hereinafter will refer to the "Superintendent or his/her designee." The term "Concessioner" hereinafter will refer to the TW Recreational Services, Inc.

This document is about the use of funds. The source of these funds is established in the contract language at Section 10.

The Government Improvement Account (GIA) and Capital Account (CA) are to be used to rehabilitate or construct facilities which directly support Concessioner services authorized and/or required under this contract. Examples of appropriate facilities would include lodging, restaurants, gift shops or service stations, as well as Concessioner support facilities necessary for the functioning of the primary visitor facilities (such as utility systems, administrative offices, and repair shops). Improper uses would include construction or repair of government visitor facilities (visitor centers, interpretative facilities, entrance stations, restrooms, roads, parking lots, etc.) and government support facilities (employee housing, maintenance buildings, administrative buildings, capital infrastructure such as sewer and water systems, etc.). Expenditures from special account funds may be made only for Concessioner visitor service and facility projects constructed upon park lands assigned to the Concessioner for use in providing the visitor services and facilities authorized by the Concession Contract. Expenditures for projects on other park lands or for other purposes are unlawful. Both CA and GIA accounts. Both CA and GIA accounts are for "projects" and are established as contract obligations. No possessory interest is accrued by the Concessioner for improvements made by these accounts.

Funds in GIA and CA accounts can be invested in various instruments in advance of being used to carry out the Concessioner's obligations under the contract. Whatever the method selected to hold the funds pending project work beginning, the parties to this contract agree that all funds will either be held in an account(s) insured by the Federal Deposit Insurance Corporation or a similar insuring activity of the Federal government and/or that all investment instruments will be notes, bills, and bonds issued by the United States Treasury which shall be whole instruments including both principal and interest (no derivative instruments) and which shall be directly backed by the full faith and credit of the United States of America

The funds in the GIA will be held in an account insured by the Federal Deposit Insurance Corporation or a similar insuring activity of the Federal government established and owned by the Concessioner to carry out Concessioner obligations under this contract. The funds in the CA will be held in an account insured by the Federal Deposit Insurance Corporation or a similar insuring activity of the Federal government account established and owned by the Concessioner to carry out Concessioner obligations under this contract. Trust accounts are not permissible.

Deposited funds remain the property of the Concessioner. The Concessioner makes an irreversible commitment when deposits are made into a GIA or CA. Deposited funds do not become Government funds. Interest earned on CA or GIA accounts becomes an addition to the balance of the CA or GIA. The Concessioner is responsible for taxes owed on such interest. GIA and CA funds cannot be used to pay such taxes.

GIA and CA funds must be maintained in separate accounts with record keeping used to maintain continuous records of the balances and allocation of income and expenses appropriate to each.

Exhibit H
CONCESSION CONTRACT IMPROVEMENT
ACCOUNT CONTROL PROCEDURES
CC-ZION003-84
PAGE 2 OF 6

Concessioners are responsible for reporting or ensuring the reporting of CA and GIA activity each month and for annually filing, as part of their Annual Financial Report, the schedules that may be required by the Secretary.

The Concessioner shall not be paid or reimbursed in any way for account management. However, account management expenses incurred by third parties with the written approval, in advance, of the properly delegated National Park Service authority may be considered as account expenses.

The Concessioner may, **with the approval of the Superintendent**, be allowed to charge the GIA or CA for actual expenses incurred, in an amount not to exceed ten percent (10%) of approved project expenditures, for reasonable concessioner administrative costs directly associated with carrying out individual projects. The Concessioner shall provide a detailed listing of each cost incurred to the Superintendent who shall determine the reasonableness and appropriateness of such expenses prior to their being allowed.

CA and GIA funds are not to be used for the payment of routine maintenance and operating expenses of the Concessioner. Additionally, they are not to be used for maintenance of government property not assigned to the Concessioner or for government projects or activities not directly related to the provision of the involved concessioner's services.

CA and GIA funds are not to be used to pay or otherwise reimburse or credit Concessioner annual operating costs or government appropriation accounts.

The contracts entered into by the Concessioner (or others should that be authorized) to undertake projects are private contracts, not government contracts, and are issued at an arm's length to obtain the best contract price possible. The Concessioner shall not, directly or indirectly, enter into any arrangement or agreement whereby it receives money or other benefits from the contractor.

The Superintendent may require that the CA or GIA fund the cost of an independent, third party construction supervisor/inspector to represent the interests of the Government on any project where the Superintendent feels that would be cost effective and necessary to the sound administration of the project.

The Concessioner shall ensure that a Builders Risk Form insurance policy is in effect during the construction. The type and amount of insurance will be approved in writing by the Superintendent. This policy is an appropriate expenditure from the CA or GIA.

In the event of any inconsistency between this Exhibit and the main body of the Concession Contract, the contract shall prevail.

POLICY FOR USE OF THE GOVERNMENT IMPROVEMENT ACCOUNT

The contract includes specific provisions establishing a GOVERNMENT IMPROVEMENT ACCOUNT (GIA) and describing its purpose or principal goals.

Appropriate GIA expenses would include major capital expenditures in government-owned structures assigned to Concessioners for concession purposes, such as foundation, building frame, window frame

replacement, sheathing, subfloors, drainage, rehabilitation of building systems such as electrical, plumbing, built-in heating and air conditioning, roofing, and similar. Projects could also include additions to buildings.

The account shall not be used for the operating costs of building systems or for minor adjustment and repair that would be the usual, routine responsibility of the Concessioner.

The account shall not be used for decorating costs, furniture, or periodic re-carpeting or other cosmetic work necessary. Neither would the account be appropriate for cleaning or landscaping care or similar routine upkeep activity.

The GIA shall not be used for seasonal opening and closing costs.

Decisions on use of funds are based on the facts of the particular situation. However, appropriate expenditures will typically be non-recurring within a five-to-seven year time frame.

POLICY FOR USE OF THE CAPITAL ACCOUNT

The contract includes specific provisions establishing a CAPITAL ACCOUNT (CA) and describing its purpose or principal goals.

The basis for the account is the need to establish systematically available funds for the ongoing improvement of concession facilities. The use of a CA allows reserves to be established for known requirements even while exact projects, construction timing, and planning are not yet resolved.

CA projects include project planning, design, and construction of new buildings and infrastructure, rehabilitation of existing buildings and related infrastructure, demolition of old facilities, and site restoration. The CA can be used to supplement the GIA.

The CA is established to undertake non-recurring projects of significant capital improvement to real property assigned to the Concessioner. The CA will not be used for routine or cyclic repair and maintenance except where a CA project would obviate the need for cyclic repair and maintenance. The CA will not be used for acquisition, lease or maintenance of personal property.

PROJECT NOMINATION AND APPROVAL

1. Spending money from CA or GIA requires a coordinated effort between the Concessioner and the Superintendent. Projects must be proposed, prioritized, approved, bid and accomplished with an orderly process that ensures accountability.
2. The National Park Service staff and/or the Concessioner may submit proposals to the Superintendent for the use of the CA or GIA using a format established by the Superintendent for "Account Project Nomination" (a standard control form). It is intended that a nomination form be the first step in the development of a project file.
3. The Superintendent will establish an Account Committee (AC) to review and recommend approval/disapproval of project nominations. The committee will include at least the Park's Concession

Management Specialist and will also include other staff members deemed appropriate by the Superintendent. The Chair will be the park's lead concession operative unless a different appointment is made by the Superintendent. The Superintendent will establish a process to review and approve/disapprove project nominations based on but not limited to the following:

- Applicable Laws and regulations
- NPS Policies
- Concession Contract and Amendments Including the Appropriateness of the Project Given the GIA or CA Purposes Stated in this Exhibit
- Operating and Maintenance Plans
- Need, based on resource impacts or human risk factors
- Compliance with NPS planning documents
- Other applicable factors

Upon completion of the review, the AC will prepare a record of the evaluation and a recommendation for approval/disapproval by the Superintendent. The documentation will be placed in the "Project Statement" (a standard control form).

4. A **Project Statement** will guide and document each project's implementation through completion. This Statement will contain the following: justification, specific proposal, scope of work, design responsibility, proposed project schedule and compliance requirements. The Project Statement will be signed by the Superintendent and the Concessioner's authorized representative. The signed Project Statement constitutes official authority for the Concessioner to begin work on the project.

The Project Statement will provide a chronological audit trail of the project's decision making activity including meetings, inspections, change orders, etc., from nomination to project completion. Support documents will be maintained in the Project File or reference in the Project Statement where related documents can be found.

SPECIFICATIONS, DESIGN, AND BIDDING

1.a. Work funded by a CA/GIA account is to be accomplished through competitive contracts.

1.b. Construction work will not be done by concession employees unless the Superintendent determines that there are unusual circumstances that make such work both advantageous and effectively managed. Concessioners may use sole-source contracts only with the prior approval of the Superintendent.

1.c. Concessioner may not bid as independent contractors, or be employed by the contractor for GIA and CA projects.

1.d. The Concessioner shall not directly or indirectly, enter into any contract whereby it benefits directly or indirectly through the transfer of funds or other benefits from a GIA or CA project contractor.

1.e. Exceptions to these policies may be granted in writing by the Superintendent on a case-by-case basis when there are unusual circumstances, clear advantages to the government, and adequate

controls.

2. The Concessioner will develop a project description sufficient to secure an architect, engineer, or construction contractor. These will be reviewed and authorized in writing by the Superintendent.
3. Plans and specifications will be prepared by the Concessioner and will follow NPS-10, NPS-48, and NPS-70. When design is involved in a project, the designs will be reviewed by the Superintendent as appropriate to the project, such as 50%, draft 100% completion, etc. Appropriate time should be allowed for design review by appropriate NPS staff at park, region, or service center, or by independent consultants.
4. Once plans and specifications are approved, the Concessioner will prepare to advertise or otherwise solicit or secure estimates or bids for the project.
5. For each project, the package for bidding or estimating will include at least the plans and specifications, the General Provisions, and a draft contract or agreement under which the work will be carried out and that has been reviewed and approved by the Superintendent. If lodging and/or meals are provided by the Concessioner as part of the contract, the contract must include this provision and rates. If an action is not a construction project, prepare an appropriate package for that action and determine how to proceed to bid or otherwise secure cost estimates.
6. If the project is bid, the Concessioner will receive, open, and evaluate project bids.
7. The Concessioner will recommend and justify a contractor from among the bidders or from other sources if a bid process was not used. This recommendation will be accepted/rejected by the Superintendent in writing. Once confirmation has been issued, the Concessioner is authorized to sign a contract and proceed with the project.
8. At this time, the Concessioner will submit to the Superintendent an estimate of the final budget and time schedule for the project.
9. At appropriate intervals the Concessioner will submit to the Superintendent a project progress report enumerating project costs, with invoices, certificates, and other documentation; and work accomplished to date.
10. Change orders on project contracts require approval in writing from the Superintendent.
11. Upon certification from the contractor that a project is complete, the project will be inspected jointly by the Concessioner and the Superintendent. The project will not be accepted by the Concessioner until authorized in writing by the Superintendent.

7 Exhibit H
CONCESSION CONTRACT IMPROVEMENT
ACCOUNT CONTROL PROCEDURES
CC-ZION003-84
PAGE 8 OF 8

12. Upon project completion, the Concessioner will submit to the Superintendent a project completion report including total project costs, warranties, service manuals, other similar documents, and as-built drawings of the project in the form specified. Invoices, certificates, and other documentation related to the final segment of work accomplished shall accompany the report and be the basis for final payment of the contractor. Final payment to the contractor and final reimbursement to the Concessioner for administrative costs shall not be made until the project has been accepted in writing by the Superintendent. The Concessioner is required to submit a summary of administrative costs for the project.

CONCESSIONER

UNITED STATES OF AMERICA

BY:


President

BY:


Director

Metropolitan Park Service

DATE: 12-4-95

DATE: 12/8/95